

**WINDSOR CANADA UTILITIES LTD.
AS BUYER**

- and -

**THE CORPORATION OF THE TOWN OF ESSEX
AS SELLER**

PURCHASE AND SALE AGREEMENT

Dated as of March 12, 2025

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION.....	1
1.1 Defined Terms.....	1
1.2 Headings, etc.	14
1.3 Currency.....	14
1.4 Time Reference.....	14
1.5 Certain Expressions, Etc.....	15
1.6 Knowledge.....	15
1.7 Accounting Terms.	15
ARTICLE 2 PURCHASED SHARES AND PURCHASE PRICE	16
2.1 Purchase and Sale.....	16
2.2 Purchase Price.....	16
2.3 Delivery of the Estimated Statement and Payout Letters.....	16
2.4 Payment of Estimated Purchase Price at Closing.....	17
2.5 Satisfaction of Estimated Closing Indebtedness and Estimated Transaction Expenses.....	18
2.6 Closing Statement.....	18
2.7 Purchase Price Allocation.....	21
ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER	21
3.1 Formation and Power.....	21
3.2 No Conflict.....	21
3.3 Required Authorizations.....	21
3.4 Required Consents.....	22
3.5 Execution and Binding Obligation.....	22
3.6 Title to Purchased Shares.....	22
3.7 No Other Agreement to Purchase.....	22
3.8 Litigation.....	22
3.9 No Brokers.....	22
3.10 Resident of Canada.....	22
ARTICLE 4 REPRESENTATIONS AND WARRANTIES AS TO THE GROUP ENTITIES	23
4.1 Formation and Power.....	23
4.2 Execution and Binding Obligation.....	23
4.3 No Conflict.....	23
4.4 Required Authorizations.....	24
4.5 Required Consents.....	24
4.6 Authorizations.....	24
4.7 Capitalization of the Group Entities.....	24
4.8 Other Interests.....	25
4.9 Financial Statements.....	25
4.10 Conduct of Business.....	26
4.11 No Undisclosed Liabilities.....	28
4.12 Material Contracts.....	29
4.13 Litigation.....	31
4.14 Compliance with Laws.....	31

TABLE OF CONTENTS
(continued)

	Page
4.15 Ethical Practices.	31
4.16 Title to and Sufficiency of Assets.....	32
4.17 Owned Real Property.....	32
4.18 Leased Real Property.....	33
4.19 Easements	33
4.20 Expropriation and Condemnation.....	33
4.21 Environmental Matters.	34
4.22 Indigenous Matters	34
4.23 Intellectual Property.	35
4.24 Computer Systems.....	36
4.25 Insurance.....	36
4.26 Employment and Labour Matters.	37
4.27 Benefit Plans.....	39
4.28 Related Party Transactions.	41
4.29 Bank Accounts and Powers of Attorney.....	41
4.30 Books and Records.	41
4.31 Tax Matters.....	42
4.32 Competition Act.	45
4.33 Privacy and Data Security.	45
4.34 No Brokers.....	46
4.35 Prudential Support.	46
4.36 Water Heater Rental Contracts.	46
ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER.....	47
5.1 Formation and Power.....	47
5.2 No Conflict.	47
5.3 Required Authorizations.....	48
5.4 Required Consents.	48
5.5 Execution and Binding Obligation.	48
5.6 Litigation.	48
5.7 No Brokers.....	48
5.8 Investigation; No Additional Representations; No Reliance, etc.	48
ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES.....	49
6.1 Conduct of Business Prior to Closing.....	49
6.2 Access	52
6.3 Notice of Developments.	52
6.4 Confidentiality.	53
6.5 Satisfaction of Conditions.	53
6.6 Shareholder and Directors; Release.....	53
6.7 Regulatory and Other Required Consents.	54
6.8 Exclusivity.	55
6.9 Termination of Related Party Transactions.	56
6.10 Liens.	56
6.11 Corporate Action.	56
6.12 Interim Financial Statements.	56
6.13 By-Laws and Ordinances.....	56

TABLE OF CONTENTS
(continued)

	Page
6.14 Cooperation.	57
6.15 Collective Agreements.	57
ARTICLE 7 CLOSING.....	57
7.1 Closing.....	57
7.2 Closing Deliveries by Seller and the Group Entities.	57
7.3 Closing Deliveries by Buyer.....	58
ARTICLE 8 CONDITIONS OF CLOSING; TERMINATION	59
8.1 Conditions for the Benefit of Buyer.	59
8.2 Conditions for the Benefit of Seller.....	61
8.3 Termination.	61
8.4 Effect of Termination.	62
8.5 Management Contract.....	64
ARTICLE 9 POST-CLOSING COVENANTS.....	64
9.1 Further Assurances.	64
9.2 Tax Matters.....	64
9.3 Post-Closing Confidentiality.	67
9.4 Employee Retention.	67
9.5 Advisory Committee.....	68
ARTICLE 10 INDEMNIFICATION	68
10.1 Indemnification in Favour of Buyer.	68
10.2 Indemnification in Favour of Seller.....	69
10.3 Time Limitations.	69
10.4 Other Limitations on Recourse and Indemnification Obligations.....	70
10.5 Other Indemnification Matters.	71
10.6 Notification.	71
10.7 Direct Claims.	72
10.8 Third Party Claims.....	72
10.9 Duty to Mitigate.....	74
10.10 Payment of Indemnification.	74
10.11 Adjustment to Purchase Price.	74
10.12 Specific Performance.....	74
10.13 Benefit to Indemnified Parties.	75
10.14 Release of Escrow.	75
ARTICLE 11 MISCELLANEOUS	75
11.1 Notices.	75
11.2 Time of the Essence.....	76
11.3 Announcements.	76
11.4 Third Party Beneficiaries.....	77
11.5 Non-Recourse.	77
11.6 Expenses.	77
11.7 Amendments.....	77

TABLE OF CONTENTS (continued)

	Page
11.8 Waiver.	77
11.9 Non-Merger.	78
11.10 Independent Legal Advice.	78
11.11 Entire Agreement.	78
11.12 Exhibits and Schedules.	78
11.13 Successors and Assigns.	78
11.14 Assignment.	78
11.15 Severability.	78
11.16 Governing Law.	79
11.17 Counterparts.	79
 Schedule “A” – Seller Disclosure Letter	
Schedule “B” – Capital Program Budget	
Schedule “C” – Purchase Price Allocation	
Exhibit “A” – Form of Escrow Agreement	
Exhibit “B” – Form of Governance Representation Agreement	
Exhibit “C” – Sample Statement	
Exhibit “D” – Form of Director and Officer Releases	
Exhibit “E” – Form of Shareholder Release	
Exhibit “F” – Seller Closing Certificate	
Exhibit “G” – Buyer Closing Certificate	
Exhibit “H” – Form of Local Community Commitment Agreement	
Exhibit “I” – Form of Contribution Agreement	

PURCHASE AND SALE AGREEMENT

Purchase and Sale Agreement dated March 12, 2025, among **Windsor Canada Utilities Limited**, a corporation formed under the laws of the Province of Ontario (“**Buyer**”) and **The Corporation of the Town of Essex**, a corporation formed under the laws of the Province of Ontario (the “**Seller**”).

WHEREAS Seller owns 100% of the issued and outstanding shares of E.L.K. Energy Inc. (such entity, “**ELK**”);

AND WHEREAS Seller owns 10,000 Class B Common shares in the capital of E.L.K. Solutions Inc. (such entity, “**ESI**” and, together with ELK, the “**Group Entities**”), which represents 50% of the issued and outstanding shares in the capital of ESI;

AND WHEREAS ELK owns 10,000 Class A Common shares in the capital of ESI, representing 50% of the issued and outstanding shares in the capital of ESI (the “**Indirect ESI Shares**”);

AND WHEREAS the Group Entities operate the business of developing, constructing, owning and operating an electricity distribution system, the renting of water heaters and the replacing of streetlights as required (the “**Business**”);

AND WHEREAS Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller the Purchased Shares upon the terms and subject to the conditions set forth in this Agreement;

AND WHEREAS prior to the entering into of this Agreement, Seller passed a council resolution duly authorizing the entering into of this Agreement and the completion of the Transactions and such resolution and authorization remain in full force and effect;

AND WHEREAS following the date of this Agreement, Buyer and ELK may enter into the Management Contract;

AND WHEREAS Buyer has paid the Deposit in respect of the Transaction;

NOW THEREFORE, in consideration of the premises and the mutual agreements and covenants hereinafter set forth, the Parties hereby agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms.

As used in this Agreement, the following terms have the following meanings:

“**Accounts Receivable**” means the accounts receivable, including any sales Tax receivable, arising out of the sale of goods or the provision of services by the Group Entities.

“**Adjustment Escrow Amount**” has the meaning ascribed thereto in Section 2.4(a)(i).

“**Affiliate**” means, with respect to any Person, any other Person which, directly or indirectly, through one or more intermediaries: (a) Controls the first Person; (b) is Controlled by the first Person; or (c) is under common Control with the first Person.

“Agreement” means this purchase and sale agreement together with the schedules and exhibits attached hereto, including the Seller Disclosure Letter.

“Ancillary Agreements” means: (a) the Contribution Agreement, (b) the Governance Representation Agreement, (c) Shareholder Releases, (d) the Director and Officer Releases, (e) the Local Community Commitment Agreement, (f) the Escrow Agreement and (g) and all other agreements required to be delivered hereunder.

“Anti-Corruption Laws” has the meaning ascribed thereto in Section 4.15.

“Authorization” means, with respect to any Person, licenses, permits, authorizations, Orders, registrations, certificates, variances, approvals, consents and franchises of any Governmental Authority having jurisdiction over the Person or its business or assets and any pending applications related to any of the foregoing.

“Balance Sheet Date” means December 31, 2023.

“Benefit Plan” has the meaning ascribed thereto in Section 4.27(a).

“Books and Records” means all books and records of the Group Entities, including all statements, budgets, books of account, Tax and financial records, Tax Returns, work papers and letters from accountants, ledgers, journals, sales and purchase records, customer and supplier lists, business reports and plans, minute books and other corporate records, share certificates, central securities registers (or equivalents), Contracts, deeds, permits, environmental studies and plans, whether in writing or electronic form.

“Business” has the meaning ascribed thereto in the Recitals.

“Business Day” means any day other than a Saturday, Sunday or other day on which the main branches of principal commercial banks in Windsor, Ontario are not open for business during normal business hours.

“Buyer” has the meaning ascribed thereto in the Preamble.

“Buyer Closing Certificate” has the meaning ascribed thereto in Section 8.2(b).

“Buyer Indemnified Party” means each of Buyer and each of the Group Entities and their respective Affiliates, Representatives, successors and permitted assigns.

“Capital Program Budget” means the capital program budget of ELK attached hereto as Schedule “B”.

“Closing” means the completion of the transaction contemplated by this Agreement.

“Closing Date” means either (a) the last Business Day of the month where both of the following are true: (i) such Business Day is not less than five (5) Business Days after the date on which all of the Closing conditions set out in Article 8 have been satisfied or waived (other than those Closing conditions which by their nature are to be satisfied at and as part of the Closing), and (ii) on such Business Day, all of the Closing conditions set out in Article 8 have been satisfied or waived; or (b) such earlier or later date as may be agreed to in writing by Buyer and Seller.

“Closing Date Working Capital” means the Working Capital as at the Closing as set out in the Closing Statement. For the avoidance of doubt, “Closing Date Working Capital” will not include any amounts reflected in Closing Indebtedness or Closing Transaction Expenses.

“Closing Indebtedness” means the aggregate Indebtedness of the Group Entities as at the Closing as set out in the Closing Statement.

“Closing Rate Base” means the Rate Base as at the Closing as set out in the Closing Statement.

“Closing Statement” has the meaning ascribed thereto in Section 2.6(a).

“Closing Transaction Expenses” means the aggregate Transaction Expenses of the Group Entities as at the Closing as set out in the Closing Statement.

“Collective Agreement” means any collective agreement, letter of understanding, memorandum of agreement, letter of intent, voluntary recognition agreement, or legally binding commitment or other communication with any labour union or employee association that is governing, or that is intended to at any time govern, the terms and conditions of employment of any Employees.

“Competing Transaction” has the meaning ascribed thereto in Section 6.8.

“Compulsory Payment” has the meaning ascribed thereto in Section 9.2(e).

“Computer Systems” means the computer or IT systems, including hardware, software, algorithms, codes, firmware, middleware, equipment, electronic device, computers, laptops, mobile devices, platforms, servers, workstations, routers, hubs, switches, interfaces, data, databases, data communication lines, network and telecommunications equipment, websites and internet-related information technology infrastructure, wide area network and other data communications or information technology equipment, or computer processors, peripheral equipment, computer programs, and technical and other documentation used by any Group Entity, and data entered into or created by any Group Entity using the foregoing.

“Confidentiality Provisions” has the meaning ascribed thereto in Section 6.4.

“Consent” means any consent, approval, authorization, waiver or notice which is required to be obtained or given pursuant to any Authorization or Contract.

“Contractor” means any Person who is party to a services Contract with any Group Entity (including an independent contractor or consultant) and who is not an Employee or director of any Group Entity.

“Contracts” means any contract, agreement, commitment, undertaking, indenture, note, bond, mortgage, lease, joint venture or similar arrangement, in each case, whether written or oral.

“Contribution Agreement” means the contribution agreement among Seller and Buyer to be entered into at Closing and substantially in the form attached hereto as Exhibit “I”.

“Control” (and any derivatives thereof, including **“Controlled”**) means, with respect to any Person, the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities or ownership interests, by contract or otherwise.

“Copyrights” has the meaning ascribed thereto in Section 4.23(a)(iii).

“Damages” means any cost, loss, Liability, claim, damage, expense, fine, penalty or interest (whether or not involving a Third Party Claim), assessment, damages available at law or equity, Taxes or other amounts, including all costs and all amounts paid or payable in investigating, defending, preparing or settling any

claim (including all reasonable costs, fees and expenses of legal counsel and other advisors and experts incurred in connection with investigating, defending, preparing or settling any claim).

“Data Security Incident” means any confirmed or suspected (a) loss, theft or damage of, (b) other unauthorized or unlawful access to, or use, disclosure or other processing of, Personal Information; or (c) any other data security incident requiring notification to any Persons (including pursuant to Laws or Contracts) or regulators.

“Data Security Requirements” means all of the following, to the extent relating to privacy or data security and applicable to the Group Entities: (a) all of the Group Entities own privacy and data security policies, rules and procedures of the Group Entities; (b) all applicable Laws, including Privacy and Data Security Laws; (c) all applicable Laws governing spam, commercial electronic communications, telephone and other telecommunications, or similar subject matter, as applicable, including *Canada’s Anti-Spam Legislation*; (d) industry standards applicable to the industry in which the Group Entities operate, including the *Payment Card Industry Data Security Standards*; and (e) contractual obligations with respect to privacy, data security or the Processing of Personal Information binding on the Group Entities.

“Deposit” means an amount equal to \$ [REDACTED] paid by Buyer to Seller’s legal counsel, in trust, prior to the date of this Agreement.

“Direct Claim” means any cause, matter, thing, act, omission or state of facts not involving a Third Party Claim which entitles an Indemnified Party to make a claim for indemnification under this Agreement.

“Director and Officer Releases” has the meaning ascribed thereto in Section 6.6(a).

“Disclosure Requirements” has the meaning ascribed thereto in Section 9.2(i).

“Disputed Items” has the meaning ascribed thereto in Section 2.6(d).

“Domain Names” has the meaning ascribed thereto in Section 4.23(a)(iv).

“Draft Closing Statement” has the meaning ascribed thereto in Section 2.6(a).

“Due Diligence Period” means the period of time commencing on the signing of this Agreement and 12:00 p.m. (Windsor local time) on March 26, 2025.

“Easement Lands” means all real property being subject to any Easement.

“Easements” means all rights of way, licenses, rights of occupation, easements (including any unregistered easements) or other similar non-possessory rights in real property, other than rights in fee simple owned by the Group Entities, as are required for or in connection with the conduct of the Business.

“Electricity Act” means the *Electricity Act*, 1998 (Ontario).

“ELK” has the meaning ascribed thereto in the Recitals.

“ELK Purchased Shares” means all of the issued and outstanding shares in the capital of ELK owned or held by Seller.

“Employee” means an individual employed by any Group Entity, whether on a full time, part time or temporary basis and including those temporarily laid off or on vacation, short-term disability, long-term

disability, workers compensation leave, pregnancy, maternity, paternity, parental or sick leave or any other statutory or approved leave of absence.

“Enforcement Limitation” when used in the context of “enforceable in accordance with its terms” means that such enforceability is subject to any limitation on enforcement under applicable Laws relating to: (a) bankruptcy, winding-up, insolvency, arrangement and other similar Laws of general application affecting the enforcement of creditors’ rights; or (b) the discretion that a court may exercise in the granting of extraordinary remedies such as specific performance and injunction.

“Environmental Laws” means all applicable Laws relating to public health and safety, Hazardous Materials (including contamination and pollution) or the protection of the environment and all Authorizations issued pursuant to such Laws.

“Equity Interest” means, in respect of any Person: (a) any and all shares or other equity or ownership interests (including common shares, preferred shares, capital stock, partnership interests, trust interests, limited liability company interests and limited liability partnership interests) in such Person; (b) all rights to purchase, warrants, options, conversion privileges, exchange rights, calls, puts, securities convertible into or exchangeable for, participations, subscriptions, receipts, purchases or other equivalents of or interests in such shares or other equity or ownership interests (whether or not currently exercisable, exchangeable or convertible) in such Person and (c) any stock appreciation right, phantom stock right, profit participation, derivative of an equity security or other similar right in such Person.

“Escrow Agent” means McTague Law Firm LLP.

“Escrow Agreement” means the escrow agreement among Seller, Buyer and the Escrow Agent to be entered into at Closing and substantially in the form attached hereto as Exhibit “A”.

“ESI” has the meaning ascribed thereto in the Recitals.

“ESI Purchased Shares” means all of the issued and outstanding shares in the capital of ESI owned or held by Seller.

“Estimated Closing Date Working Capital” has the meaning ascribed thereto in Section 2.3(a)(iii).

“Estimated Closing Indebtedness” has the meaning ascribed thereto in Section 2.3(a)(ii).

“Estimated Closing Transaction Expenses” has the meaning ascribed thereto in Section 2.3(a)(iv).

“Estimated Purchase Price” has the meaning ascribed thereto in Section 2.3(a)(vi).

“Estimated Statement” has the meaning ascribed thereto in Section 2.3(a).

“ETA” means the *Excise Tax Act* (Canada) and analogous Laws of a province of Canada.

“EWU” means ENWIN Utilities Inc., a corporation formed under the laws of the Province of Ontario.

“Financial Statements” means the consolidated audited financial statements for the Group Entities for the fiscal years ended December 31, 2022 and December 31, 2023, each consisting of a balance sheet, statement of operations and retained earnings.

“Fundamental Representations” means the representations and warranties of Seller set out in Sections 3.1 (Formation and Power), 3.2 (No Conflict), 3.3 (Required Authorizations), 3.5 (Execution and Binding

Obligation), 3.6 (Title to Purchased Shares), 3.7 (No Other Agreement to Purchase), 3.9 (No Brokers), 3.10 (Resident of Canada), 4.1 (Formation and Power), 4.2 (Execution and Binding Obligation), 4.3 (No Conflict), 4.4 (Required Authorizations), 4.7 (Capitalization of the Group Entities), 4.8 (Other Interests), 4.15 (Ethical Practices), 4.16 (Title to and Sufficiency of Assets), 4.19 (Easements), 4.28 (Related Party Transactions), 4.32 (Competition Act), and 4.34 (No Brokers).

“Governance Representation Agreement” means an agreement between Buyer and Seller pursuant to which Seller has [REDACTED] substantially in the form attached hereto as Exhibit “B”.

“Governing Documents” means, with respect to any Person: (a) if a corporation or company, its articles and any by-laws; (b) if a partnership, the partnership agreement and any declaration or statement of partnership required to be filed with any Governmental Authority in order to form the partnership or maintain the limited liability of any partners; (c) if a limited liability company, the articles of organization and operating agreement; (d) if a trust, the trust deed and declaration of trust; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all shareholders’ or equity holders’ agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of such Person or relating to the rights, duties and obligations of such Person’s equity holders; and (g) any amendment or supplement to any of the foregoing.

“Governmental Authority” means: (a) any multinational, federal, state, provincial, municipal, regional, local or other government, governmental or public department, ministry, central bank, court, tribunal, arbitrator, arbitral body, commission, commissioner, minister, governor-in-counsel, cabinet, board, bureau, agency, tribunal or instrumentality domestic or foreign; (b) any subdivision or authority of any of the foregoing; and (c) any self-regulated organization or other non-governmental regulatory authority or quasi-governmental or private body, which exercises any regulatory, administrative, expropriation or taxing authority under or for the account of any such authority or body and for which its determinations have the force of Law.

“Group Entities” has the meaning ascribed thereto in the Recitals.

“GST/HST” means the goods and services tax and/or harmonized sales tax levied under the ETA and any similar Tax imposed by any province.

“Guarantee” means, as to any Person, any obligation of such Person guaranteeing or otherwise supporting any Liability (“primary obligation”) of any other Person (the “primary obligor”) in any manner, including any obligation or arrangement of such Person to: (a) purchase or repurchase any such primary obligation; (b) advance or supply funds for the purchase or payment of any such primary obligation; (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation; (d) protect the beneficiary of such arrangement from loss; or (e) indemnify the owner of such primary obligation against loss in respect thereof.

“Hazardous Materials” means any waste or other substance or phenomenon that is prohibited, listed, defined, designated, regulated or classified as, or otherwise determined to be, dangerous, hazardous, radioactive, explosive or toxic or a pollutant or a contaminant under or pursuant to, or is otherwise regulated by, any Environmental Laws, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

“IFRS” means at any time, the International Financial Reporting Standards as used in Canada, developed by the International Accounting Standards Board and applied on a consistent basis for the relevant period.

“Indebtedness” means, as to any Group Entity, as of any time, without duplication, any Liabilities of such Group Entity arising under, in respect of, for or related to: (a) any indebtedness for borrowed money (including overdraft facilities), whether short term or long term (including the outstanding principal amount of, accrued and unpaid interest on, and other Liabilities or obligations of such Group Entity (including any prepayment premiums, breakage or make-whole fees, expenses or penalties related thereto, and any other fees and expenses required to be paid upon repayment thereof and payable as a result of the consummation of the Transaction) related thereto); (b) capitalized leases, leases recorded as a liability on a balance sheet or statement of financial position, conditional sales contracts and other similar title retention instruments; (c) all Liabilities secured by any Lien on any property or assets; (d) all Liabilities under any foreign exchange contract, interest rate swap or other similar interest rate or foreign exchange or other hedging agreement; (e) any notes (including promissory notes issued in connection with the acquisition or disposition of assets or securities), bonds, debentures or similar Contracts; (f) the deferred purchase price of property, goods or services other than trade payables or accruals incurred in the Ordinary Course and less than 90 days past due and included in Working Capital; (g) any obligation in respect of letters of credit and bankers’ acceptances; (h) any amounts owing to current or former holders of Equity Interests in such Group Entity with respect to unpaid dividends or distributions; (i) accrued Taxes, (j) without duplication, any deferred payroll Taxes to the extent not otherwise included in trade payables, (k) other post-employment benefits, including any reflected on any balance sheet or statement of financial position of any Group Entity, and (l) all monetary obligations of such Group Entity in the nature of Guarantees of the Indebtedness described in clauses (a) through (k) above of any other Person.

“Indemnified Party” means a Person with indemnification rights or benefits under this Agreement.

“Indemnifying Party” means a Party which may have a Liability for indemnification under this Agreement.

“Indemnity Escrow Amount” has the meaning ascribed thereto in Section 2.4(a)(ii).

“Indemnity Escrow Release Date” has the meaning ascribed thereto in Section 10.14.

“Indigenous Claim” means any claim, Proceeding, assertion or demand, whether proven or unproven, made by any Indigenous Group, in respect of any of the following: (a) title to all or any portion of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity; (b) rights (including any treaty rights), benefits or interests stated to relate or apply to all or any portion of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity; (c) treaty land entitlement claims respecting all or any portion of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity; or (d) failure to be consulted and/or accommodated, or other alleged breach or violation of any right of any Indigenous Group, with respect to any Authorization or any use, development or improvement of any Owned Real Property, Easement Lands and/or other lands in the operation of any Group Entity and/or any business of any Group Entity.

“Indigenous Group” means a band as that term is defined in the *Indian Act* (Canada), or a community or people that holds rights recognized and affirmed by section 35 of the *Constitution Act, 1982* (Canada), any Person, council, government or other entity that is authorized to act on behalf of any of the foregoing and any other Person, entity or group that asserts that it has Indigenous rights.

“Indirect ESI Shares” has the meaning ascribed thereto in the Recitals.

“Information Security Program” has the meaning ascribed thereto in Section 4.33(e).

“Intellectual Property Rights” means all rights in and to: (a) Patents, Patent applications and Patent disclosures (whether utility or design), together with all reissues, divisions, continuations, renewals, continuations-in-part, revisions, extensions and re-examinations thereof; (b) Trademarks, service marks, trade dress, logos, Domain Names, trade names and corporate names, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith; (c) Copyrights, Software, Domain Names, social media accounts, copyrightable works, copyrights and all applications, registrations and renewals in connection therewith; and (d) all inventions (whether patentable or not), invention disclosures, trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals).

“Interim Period” means the period between the close of business on the date hereof and the earlier of: (a) the Closing Date; and (b) the date of termination of this Agreement in accordance with Article 8.

“knowledge of Seller” has the meaning ascribed thereto in Section 1.6.

“Laws” means any and all: (a) laws, constitutions, treaties, statutes, codes, ordinances, Orders, decrees, rules, principles of common law and equity, regulations, by-laws, pronouncements, or other requirement having the force of law; (b) Orders, decisions and directives of any Governmental Authority; and (c) policies, codes, practices, standards, guidelines, notices and industry regulations and protocols to the extent that they have the force of law.

“Liability” means all indebtedness, liabilities, obligations or commitments of any nature whatsoever, whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether matured or unmatured, whether determined or determinable, whether liquidated or unliquidated, and whether due or to become due, including those arising under any Law, Proceeding, Governmental Authority, Contract, agreement, arrangement, commitment or undertaking.

“Lien” means any mortgage, charge, pledge, hypothec, security interest, assignment, lien (statutory or otherwise), option, adverse claim, assignment, title retention agreement or arrangement or other encumbrance which affects the right, title or interest in or to any particular property and/or secures payment or performance of a Liability.

“Local Community Commitment Agreement” means the local community commitment agreement among Seller and Buyer to be entered into at Closing and substantially in the form attached hereto as Exhibit “H”.

“Management Contract” means the management contract that may be entered into by Buyer and ELK following the date of this Agreement pursuant to which the Buyer would provide management services to ELK during a portion of the Interim Period.

“Market Rules” means the market rules for the Ontario electricity market, as amended from time to time, made by the Independent Electricity System Operator pursuant to Section 32 of the Electricity Act.

“Material Adverse Effect” means any event, fact, circumstance, condition or change (each an “effect”) that, which, when considered either individually or in the aggregate together with all such effects, has or could reasonably be expected to have, a material adverse effect upon the business, results of operations,

condition (financial or otherwise), assets, properties, Liabilities or prospects of the Group Entities, taken as a whole, or that materially impairs the ability of Seller or Group Entities to complete the Transaction.

“Material Contracts” means any Contract to which any Group Entity is a party or by which any Group Entity or any of its assets or properties may be bound of the type described in Section 4.12(a)(i) through Section 4.12(a)(xxii) inclusive.

“Municipal Easement Lands” has the meaning attributed thereto in Section 4.19(d).

“Non-Party Affiliates” has the meaning ascribed thereto in Section 11.5.

“Notice” has the meaning ascribed thereto in Section 11.1.

“Notice of Objection” has the meaning ascribed thereto in Section 2.6(c).

“OEB” means the Ontario Energy Board.

“OEB Act” means the Ontario Energy Board Act, 1998.

“OEB APH” means the Ontario Energy Board’s Accounting Procedures Handbook For Electricity Distributors issued in December 2011 and effective as of January 1, 2012, as amended from time to time and as supplemented by the FAQs and associated guidance set forth on the Ontario Energy Board’s webpage.

“OEB Approval” means the OEB’s approval of the Transaction pursuant to Section 86(2) of the OEB Act, together with, if Buyer in its sole discretion determines to be necessary, (a) the OEB’s approval pursuant to Section 78 of the OEB Act of a rate framework under which ELK and ENWIN Utilities Inc. are each permitted to rebase their distribution rates following Closing but prior to requesting approval in a future application to amalgamate pursuant to Section 86(1)(c) of the OEB Act, and (b) the OEB’s decision in response to a notice of proposal pursuant to Section 80 of the OEB Act, either not to review or to approve under Section 82 of the OEB Act the purchase by Buyer, as an affiliate of a distributor, of shares of a corporation that owns a generation facility in Ontario.

“OMERS Plan” means the Ontario Municipal Employees Retirement System defined pension plan of which the Employees of ELK and ESI are entitled to participate.

“Order” means any settlement, stipulation, order, writ, judgment, injunction, ruling, legally enforceable determination, award or decree of any Governmental Authority.

“Ordinary Course” means, with respect to an action taken by a Person, that such action is consistent with the past practices of the Person and is taken in the ordinary course of the normal day-to-day operations of the Person.

“Owned Real Property” has the meaning ascribed thereto in Section 4.17.

“Parties” means the parties to this Agreement being, collectively, Buyer and Seller, and **“Party”** means either one of them.

“Patents” has the meaning ascribed thereto in Section 4.23(a)(ii).

“Payment Direction” has the meaning ascribed thereto in Section 2.4(b).

“Payout Letters” means, with respect to the Closing Indebtedness of any Group Entity, letters from the holders of such Indebtedness to such Group Entity, in form and substance satisfactory to Buyer, acting reasonably, which, among other things: (a) set forth the full outstanding amount of such Indebtedness as at the Closing Date, including any interest, break fees, and related costs; (b) specify the wire transfer details for the payment of such amount; (c) confirm that upon receipt of such amount, all Liens and related guarantees in favour of such holder shall be released and discharged and all obligations of such Group Entity in respect of such Indebtedness shall be satisfied and fully released; and (d) authorize Buyer and its Representatives to file discharges of any registration in respect of any Liens, as the case may be.

“Permitted Liens” means:

- (a) liens for Taxes which are not yet due and delinquent or that are being contested in good faith by proper legal Proceedings and for which adequate accruals or reserves have been included in the Financial Statements and there is no requirement under applicable Law that such Taxes be paid or secured notwithstanding such contest;
- (b) undetermined or inchoate liens and other liens or encumbrances imposed by Law, such as carrier’s, warehousemen’s, mechanics’, construction and materialmen’s liens, incurred in good faith in the Ordinary Course provided that such liens or encumbrances are related to obligations not yet due or delinquent or are being contested in good faith by proper legal Proceedings and are not registered against title to any of the assets held for use or used in connection with the Business, and provided that appropriate security has been posted or adequate accruals or reserves maintained;
- (c) subsisting reservations, limitations, provisos, conditions or exceptions (including royalties) contained in any original grant of the land or any portion thereof or interest therein from the Crown;
- (d) encumbrances, easements, rights of way, rights, covenants, conditions and restrictions, encroachments, land use or other restrictions, development agreements, subdivision agreements, site plan agreements, restrictive covenants and other restrictions on real property, in each case provided same is registered on title to the Owned Real Property and does not affect the use of or the operations currently conducted at the Owned Real Property and provided that all of the foregoing are complied with; and
- (e) the Liens listed in Schedule 1.1(a) of the Seller Disclosure Letter.

“Person” means any individual, partnership, company, corporation, limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity or Governmental Authority.

“Personal Information” means information about an identifiable individual or as defined in the applicable Privacy and Data Security Laws.

“Post-Closing Tax Period” means a taxation year or period that begins on or after the time of Closing and, with respect to a Straddle Period, the portion of such taxation year or period beginning at the time of Closing.

“Pre-Closing Tax Period” means a taxation year or period that begins before and ends on or before the time of Closing and, with respect to a Straddle Period, the portion of such taxation year or period ending immediately before the time of Closing.

“Pre-Closing Taxes” means (a) any and all Taxes of each of the Group Entities relating to a Pre-Closing Tax Period (for greater certainty, including the portion of any Straddle Period ending immediately before the time of Closing); (b) any and all Taxes of each of the Group Entities arising or that will be payable in a Post-Closing Tax Period in respect of unearned revenue received by it prior to the time of Closing; (c) any and all Taxes relating to a Pre-Closing Tax Period that either of the Group Entities is liable for (i) as a result of being a transferee or successor under applicable Law, or (ii) pursuant to any tax sharing, tax indemnification, tax allocation agreement or other similar agreement; (d) any and all withholding, payroll, social security, unemployment or similar Taxes of either of the Group Entities attributable to any payments that are contingent upon or payable pursuant to this Agreement (to the extent that any deduction in respect of such payments is accounted for in a Pre-Closing Tax Period); and (e) any and all Taxes of either of the Group Entities as a result of the arrangements and transactions contemplated in Section 6.9, in each case except to the extent such Taxes are reflected in the final determination of Closing Date Working Capital for purposes of determining the Purchase Price.

“Privacy and Data Security Laws” means any Laws applicable to the Processing of any Personal Information under the control of the Group Entities or to Data Security Requirements, including the *Personal Information Protection and Electronic Documents Act* (Canada).

“Proceeding” means any action, arbitration, audit, hearing, grievance, claim, complaint, investigation, litigation or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

“Processed” or **“Processing”** means the access, acquisition, collection, use, recording, alteration, retention, transfer, disclosure, destruction, disposal or any other processing (as defined by applicable Privacy and Data Security Laws) of any Personal Information, sensitive information, or confidential information (whether in electronic or any other form or medium).

“Prudential Support” means prudential support in respect of the Group Entities pursuant to the Market Rules in the form of guarantees, letters of credit or other financial assurances or security as required by the Independent Electricity System Operator.

“Purchase Price” has the meaning ascribed thereto in Section 2.2.

“Purchased Shares” means the ELK Purchased Shares and the ESI Purchased Shares.

“Rate Base” means the rate base of ELK, calculated on the basis of and in accordance with the methodologies and accounting policies and practices consistent with the preparation of the Sample Statement.

“Related Party” means, in respect of any Person, (a) any Affiliate of such Person (b) any shareholder, director, officer or employee of such Person or any Affiliate of such Person and (c) any other Person not dealing at arm’s length (within the meaning of the Tax Act) with such Person or any Affiliate of such Person.

“Related Party Transactions” has the meaning ascribed thereto in Section 4.28.

“Release” means any spilling, leaking, pumping, injection, disposal, emitting, discharging, depositing, escaping, leaching, dumping, migration or other releasing into or through the environment whether intentional or unintentional, including the movement of Hazardous Materials through or in the air, soil, surface water, groundwater or property.

“Representative” means, with respect to any Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, financial advisors and strategic and management consultants.

“Required Regulatory Approvals” means the OEB Approval and any other approvals from any Governmental Authority identified by Buyer.

“Sample Statement” means the statement and sample calculation of Working Capital, Indebtedness, Rate Base and Target Working Capital as at the Balance Sheet Date, which has been prepared in accordance with the methodologies and accounting policies and practices set forth in such statement, and attached hereto as Exhibit “C”.

“Seller” has the meaning ascribed thereto in the Preamble.

“Seller Closing Certificate” has the meaning ascribed thereto in Section 8.1(c).

“Seller Disclosure Letter” means the disclosure letter dated the date hereof, attached hereto as Schedule “A”.

“Seller Indemnified Party” means Seller and its Affiliates, successors and permitted assigns.

“Settlement Date” has the meaning ascribed thereto in Section 2.6(e)(i).

“Shareholder Releases” has the meaning ascribed thereto in Section 6.6(b).

“Software” has the meaning ascribed thereto in Section 4.23(a)(v).

“Straddle Period” means any Tax period that begins before and ends after the time of Closing. For the purposes of allocating Taxes in respect of any Straddle Period, the amount of Taxes allocable to the portion of the Straddle Period ending immediately before the time of Closing shall be deemed to be: (a) in the case of Taxes imposed on a periodic basis (such as real or personal property Taxes), the amount of such Taxes for the entire period (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period) multiplied by a fraction, the numerator of which is the number of days in the Straddle Period ending on and including the Closing Date and the denominator of which is the number of days in the entire relevant Straddle Period; and (b) in the case of Taxes not described in clause (a) above (such as franchise Taxes, withholding Taxes, Taxes that are based upon or related to income or receipts, based upon occupancy or imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible)), the amount of any such Taxes shall be determined as if such taxable period ended immediately before the time of Closing.

“Subsidiary” means, with respect to any Person, any other Person which, directly or indirectly, through one or more intermediaries, is Controlled by the first Person.

“Target Working Capital” means an amount equal to [REDACTED] calculated on the basis of and in accordance with the methodologies and accounting policies and practices consistent with the preparation of the Sample Statement.

“Tax Act” means the *Income Tax Act* (Canada), including as made applicable for purposes of the Electricity Act.

“Tax Contest” has the meaning ascribed thereto in Section 9.2(c).

“Tax Returns” means all returns (including any withholding Tax returns and information return), declarations, reports, elections, designations, filings, statements, schedules, notices, elections, forms or other documents or information (whether in tangible or intangible form and including any amendments, schedules, attachments, supplements, appendices and exhibits thereto), filed or required to be filed in respect of the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of any legal requirement relating to any Tax.

“Taxes” means (i) any and all taxes, duties, fees, excises, premiums, assessments, imposts, levies and any similar charges or assessments, or other tax of any kind whatsoever, whether disputed or not, imposed by any Governmental Authority, including the payments contemplated under Part VI of the Electricity Act and all supranational, national, federal, provincial, state, local or other taxes whether computed on a separate, consolidated, unitary, combined or other basis, including those levied on, or measured by, or described with respect to income, branch, earnings, profits, capital gains, gross receipts, windfall profits, value added, severance, ad valorem, property, capital, capital stock, disability and registration, net worth, production, sales, use, goods and services, harmonized sales, value added, license, franchise, environmental, transfer, withholding or similar, payroll, employment, employer health, government pension plan premiums and contributions, social security premiums, workers’ compensation premiums, employment/unemployment insurance or compensation premiums and contributions, stamp, occupation, premium, alternative or add-on minimum, and transfer, gift, production, real or personal property, import or export and customs duties, (ii) any installments in respect thereof, (iii) all interest, penalties, fines, additions to tax or other additional amounts imposed by any Governmental Authority, and (iv) any Liability for any of the foregoing as a transferee, successor, guarantor, or by Contract, operation of law or otherwise.

“Termination Date” means [REDACTED] or such other date as agreed to by Buyer and Seller in writing.

“Third Party Accountants” means a nationally recognized accounting firm agreed to by Seller and Buyer, acting reasonably.

“Third Party Claim” means any Proceeding that is instituted or asserted by a third party, including a Governmental Authority, against an Indemnified Party, which entitles such Indemnified Party to make a claim for indemnification under this Agreement.

“Trademarks” has the meaning ascribed thereto in Section 4.23(a)(i).

“Transaction” means the transactions contemplated by this Agreement and the Ancillary Agreements.

“Transaction Expenses” means all fees, costs, expenses or other amounts paid or payable by or on behalf of the Group Entities to any Person in connection with the negotiation, execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transaction and the process undertaken by Seller, the Group Entities and their respective Representatives leading up thereto, including:

- (a) all advisory and legal fees, costs and expenses, including all costs, fees and expenses of investment bankers, legal counsel, accountants, consultants and other advisors;
- (b) any Transaction-related, success, change of control, “stay”, “deal”, parachute, severance, retention, commission or discretionary bonus or other payments made or to be made pursuant to any Contract payable directly or indirectly as a result of or in connection with the Transaction, whether accruing or payable prior to, on or following Closing;

- (c) any payments to be made pursuant to or upon the termination of any Related Party Transactions;
- (d) any fees and expenses incurred by the Group Entities (or by Seller, to the extent payable by the Group Entities) in connection with obtaining waivers, consents or approvals of any Governmental Authority or third parties on behalf of the Group Entities in connection with the consummation of the Transactions but excluding any fees and expenses for which Buyer is responsible under Section 6.7(g);
- (e) fifty percent (50%) of all fees, cost and expenses in connection with the Escrow Agreement; and
- (f) all brokers and finders fees,

in each of the foregoing cases, if applicable, that have not been paid in full prior to the Closing, including any Taxes payable in connection with any of the foregoing.

“Transfer Taxes” has the meaning ascribed thereto in Section 9.2(k).

“Unresolved Claim” means a Direct Claim or Third Party Claim for which a Buyer Indemnified Party delivered a notification pursuant to Section 10.6 prior to the Indemnity Escrow Release Date and such claim remains unresolved as of such date.

“Water Heater Rental Contract” has the meaning ascribed thereto in Section 4.36(a).

“Working Capital” means the working capital of the Group Entities, calculated on the basis of and in accordance with the methodologies and accounting policies and practices consistent with the preparation of the Sample Statement. For greater certainty Working Capital shall not include any amounts included in Closing Transaction Expenses or Closing Indebtedness.

1.2 Headings, etc.

The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenient reference only and are not to affect the interpretation of this Agreement.

1.3 Currency.

All references in this Agreement to dollars, unless otherwise specifically indicated, are expressed in Canadian dollars.

1.4 Time Reference.

Unless otherwise indicated, all references in this Agreement to times of the day are to local time in Windsor, Ontario and all references to a “day” are to a calendar day. Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends. Where the last day of any such time period is not a Business Day, such time period shall be extended to the next Business Day following the day on which it would otherwise end.

1.5 Certain Expressions, Etc.

In this Agreement: (a) the words “includes”, “including” and similar expressions mean “include (or including) without limitation”; (b) the phrases the “aggregate of”, the “total of”, the “sum of” and similar expressions mean the “aggregate (or total or sum), without duplication, of”; (c) the phrase “made available” or “delivered”, when used in reference to a document, means that the document was made available for viewing in the electronic data room known as Firmex hosted by Doane Grant Thornton LLP, as that site existed as of 5:00 p.m. (Eastern time) on the date that is three (3) Business Days immediately prior to the date of this Agreement; (d) pronouns in one gender include the other gender, unless the context clearly indicates otherwise; (e) definitions in the singular include the plural, and vice versa; (f) the words “hereof”, “herein”, “hereunder”, “hereto” and similar expressions refer to this Agreement as a whole and the words “Article”, “Section”, “Exhibit” or “Schedule” refer to an Article of, Section of, Exhibit to or Schedule to, this Agreement, unless specified otherwise; (g) any reference to a Person includes its heirs, administrators, executors, legal personal representatives, successors and permitted assigns; (h) the word “or” is not exclusive; (i) the term “Agreement” and any reference in this Agreement to this Agreement or any other agreement or document includes, and is a reference to, this purchase and sale agreement or such other agreement or document as it may have been, or may from time to time be amended, restated, replaced, supplemented or novated and includes all Exhibits or Schedules to it; (j) any reference to a statute includes all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated or replaced from time to time, and any successor statute (or regulations promulgated thereunder) thereto; (k) the word “will” has the same meaning as the word “shall”; (l) the words “writing”, “written” and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form; and (m) when calculating the period of time within which or following which any act is to be done or any step taken, the date which is the reference date for starting the calculation of such period shall be excluded; if the last day of such period is not a Business Day, the period shall end on the next ensuing Business Day. Any reference herein to a particular provision or part of any statute will include a reference to that provision or part as it may be renumbered or amended from time to time and any successor provision or part or any renumbering or amendment thereof. All references to the Tax Act, including as made applicable for purposes of the Electricity Act, shall be deemed to include a reference to the equivalent, corresponding or analogous Tax legislation of a Province or Territory of Canada, including as made applicable for purposes of the Electricity Act. All references to a provision of the Tax Act, including as made applicable for purposes of the Electricity Act, shall be deemed to include a reference to any equivalent, corresponding or analogous provision under the applicable Tax legislation of a Province or Territory of Canada, including as made applicable for purposes of the Electricity Act.

1.6 Knowledge.

Where any representation or warranty contained in this Agreement is expressly qualified by reference to the “**knowledge of Seller**”, it shall be deemed to refer to the actual knowledge, after reasonable inquiry, of the Seller’s Director of Legal and Legislative Service, the Seller’s Director of Corporate Services and ELK’s General Manager (or interim or acting General Manager).

1.7 Accounting Terms.

All accounting terms not specifically defined in this Agreement shall be interpreted in accordance with IFRS and all determinations of an accounting nature in respect of any of the Group Entities shall be made in a manner consistent with IFRS, applied on a consistent basis with the methodology employed in connection with the preparation of the most recently audited Financial Statements of the Group Entities.

ARTICLE 2
PURCHASED SHARES AND PURCHASE PRICE

2.1 Purchase and Sale.

In accordance with and subject to the terms and conditions of this Agreement, at the Closing, Seller shall sell to Buyer, and Buyer shall purchase from Seller, all of the Purchased Shares, free and clear of all Liens.

2.2 Purchase Price.

The aggregate purchase price (the “**Purchase Price**”) payable by Buyer to Seller for the Purchased Shares shall be equal to:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

2.3 Delivery of the Estimated Statement and Payout Letters.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

2.4 **Payment of Estimated Purchase Price at Closing.**

- (a) At Closing, the Estimated Purchase Price shall be satisfied as follows:
- (i) Buyer shall deliver an amount equal to 1.0% of the Estimated Purchase Price (the **“Adjustment Escrow Amount”**) to the Escrow Agent pursuant to the Escrow Agreement;
 - (ii) Buyer shall deliver an amount equal to 10.0% of the Estimated Purchase Price (the **“Indemnity Escrow Amount”**) to the Escrow Agent pursuant to the Escrow Agreement;
 - (iii) Seller shall retain the amount of the Deposit plus all interest accrued thereon as satisfaction of a portion of the Estimated Purchase Price in an amount equal to the amount of the Deposit plus all interest accrued thereon; and
 - (iv) Buyer shall deliver, by way of wire transfer of immediately available funds to an account designated in writing by Seller in the Payment Direction the balance of the Estimated Purchase Price after deducting the amounts contemplated by Section 2.4(a)(i), Section 2.4(a)(ii) and Section 2.4(a)(iii).
- (b) Not less than five (5) Business Days prior to the Closing Date, Seller shall prepare and deliver to the Buyer a written payment direction executed by a Representative of the Seller having authority to give such direction (the **“Payment Direction”**).
- (c) The Parties acknowledge and agree that Buyer shall be entitled to conclusively and without independent investigation rely upon the Payment Direction for purposes of making the payments hereunder. Buyer shall have no obligation to verify or confirm the accuracy of the Payment Direction or the authority of the Person executing the Payment Direction. Seller (and no other Party or Person) shall be entitled to update the Payment Direction from time to time to reflect any changes to the wire transfer instructions related to any payments to be made under this Agreement, by delivering an updated and duly executed Payment Direction to Buyer, and such update shall be deemed the definitive Payment Direction for all purposes of this Agreement until further updated by Seller in accordance with this Section 2.4(c), and Buyer shall be entitled to conclusively and without independent investigation rely thereupon. Buyer, each Group Entity and their respective Affiliates are each hereby relieved from any Liability to Seller, any equity holder of the Seller, or any

Affiliate of the foregoing for the contents set out in the Payment Direction and any acts taken by it in accordance with or reliance on the Payment Direction and any changes thereto made by Seller.

- (d) The amounts held by the Escrow Agent pursuant to Section 2.4(a)(i) and Section 2.4(a)(ii) shall be invested and distributed as provided in the Escrow Agreement and this Agreement. Seller acknowledges and agrees that Seller has received the Deposit plus all interest accrued thereon and agrees that Seller is responsible to arrange for payment of the Deposit plus all interest accrued thereon by Seller's counsel to Seller at Closing. Seller hereby waives all rights and Proceedings related to not being paid the amount of the Deposit plus all interest accrued thereon.

2.5 Satisfaction of Estimated Closing Indebtedness and Estimated Transaction Expenses.

- (a) On Closing, Buyer shall advance to the applicable Group Entity, by way of loan, the applicable portion of the Estimated Closing Indebtedness set forth in the Payout Letters and such Group Entity shall pay and discharge such Estimated Closing Indebtedness on Closing. Such payments will be paid by Buyer, at the direction of the applicable Group Entity, by wire transfer of immediately available funds, in accordance with the payment instructions designated in the Payout Letters.
- (b) On Closing, Buyer shall advance to the applicable Group Entity, by way of loan, the applicable portion of the Estimated Closing Transaction Expenses and such Group Entity shall pay such Estimated Closing Transaction Expenses on Closing. Such payments will be paid by Buyer, at the direction of the appropriate Group Entity, by wire transfer or immediately available funds to one or more bank accounts designated in such direction.
- (c) For the avoidance of doubt, the loans referenced in this Section 2.5 shall not be included in the calculation of Closing Indebtedness or Closing Date Working Capital. Such loans shall be used solely for the purposes contemplated by this Section 2.5, and at Closing, Seller shall cause the applicable Group Entities to direct Buyer to pay such amounts to the applicable parties on behalf of the applicable Group Entities as contemplated by Section 2.5.

2.6 Closing Statement.

Category	Percentage
Very important	15%
Important	35%
Not important	45%
Don't know	5%
Refuse to answer	0%

- [REDACTED]
- [REDACTED]
- (b) **Cooperation**. Upon reasonable request: (i) Seller shall cooperate with Buyer to the extent reasonably required to prepare the Draft Closing Statement; and (ii) during the sixty (60) days following the delivery of the Draft Closing Statement, Buyer shall provide to Seller access to all work papers of the Group Entities and their respective accounting and financial Books and Records to verify the accuracy, presentation and other matters relating to the preparation of the Draft Closing Statement during normal business hours and provided that such access is not unduly disruptive to the Business.
- (c) **Objection Period**. Within sixty (60) days following delivery of the Draft Closing Statement, Seller shall notify Buyer in writing if Seller has any objections to the Draft Closing Statement (the “**Notice of Objection**”). The Notice of Objection must state in reasonable detail the basis of each objection and the approximate amounts in dispute. Seller shall be deemed to have accepted the Draft Closing Statement to be the Closing Statement if Seller does not notify Buyer of any objection within such period of sixty (60) days.
- (d) **Settlement of Dispute**. If Seller sends a Notice of Objection in accordance with Section 2.6(c), then Buyer and Seller shall work expeditiously and in good faith to resolve any item in the Draft Closing Statement that has been specifically identified in the Notice of Objection within a further period of forty-five (45) days after the date of the delivery of the Notice of Objection, failing which, only the items that remain in dispute (the “**Disputed Items**”) may be submitted by Seller or Buyer for final determination to the Third Party Accountants. Buyer and Seller shall use commercially reasonable efforts to cause the Third Party Accountants to complete their work within sixty (60) days of their engagement. While the Third Party Accountants are performing their engagement, the Parties shall not communicate with the Third Party Accountants on the subject matter of their work, except by joint conference call, joint meeting or letter with copy simultaneously delivered to the other Party. The Third Party Accountants shall allow Buyer and Seller to present their respective positions regarding the [REDACTED] and each of Buyer and Seller shall have the right to present additional documents, materials and other information, and make an oral presentation to the Third Party Accountants regarding the Disputed Items. The Third Party Accountants shall consider such additional documents, materials and other information and such oral presentations and the Third Party Accountants shall make their determination solely based on presentations by Seller and Buyer and not by independent review, and any determination shall be made in accordance with the methodologies and accounting policies and practices consistent with the preparation of the [REDACTED]
- [REDACTED] Any such other documents, materials or other information must be copied to Buyer and Seller and each of Buyer and Seller shall be entitled to attend any such oral presentation, and to reply thereto. With respect to each Disputed Item, the Third Party Accountants shall adopt a position that is either equal to Buyer’s proposed position, equal to Seller’s proposed position, or between (but not necessarily the “mid-point” of) the positions proposed by Seller and Buyer. The

determination of the Third Party Accountants shall be final and binding upon the Parties and shall not be subject to appeal, absent manifest error. The Third Party Accountants shall be acting as experts and not as arbitrators. The Parties agree that the procedures set forth in this Section 2.6 for resolving disputes with respect to the Closing Statement shall be the sole and exclusive method for resolving any such disputes; provided that this provision shall not prohibit Buyer or its Representatives from instituting litigation, in any court or other tribunal of competent jurisdiction, to enforce any final determination of the Purchase Price by the Third Party Accountants or to compel any Party to submit any dispute arising in connection with this Section 2.6 to the Third Party Accountants pursuant to and in accordance with the terms and conditions of this Section 2.6.

(e) **Final Settlement.**

(i) On the later of the tenth (10th) Business Day following: (x) the date on which Seller and Buyer agree to the Closing Statement (or are deemed to have agreed to the Closing Statement pursuant to Section 2.6(c)); and (y) the date on which a determination in respect of a Notice of Objection is made by the Third Party Accountants pursuant to Section 2.6(d) (such date, the “**Settlement Date**”):

(A) if the Purchase Price is greater than the Estimated Purchase Price, then (x) Buyer shall pay to Seller, by wire transfer of immediately available funds on the Settlement Date to an account or accounts directed by Seller in a Payment Direction (which Payment Direction Seller shall deliver to Buyer at least five (5) Business Days prior to the Settlement Date), an aggregate amount of cash equal to the amount by which the Purchase Price is greater than the Estimated Purchase Price and (y) Buyer and Seller shall provide a joint notice and direction to the Escrow Agent, pursuant to this Agreement and the Escrow Agreement, for the release of the Adjustment Escrow Amount to Seller; or

(B) if the Purchase Price is less than the Estimated Purchase Price, then, subject to and in accordance with Section 2.6(e)(ii), Seller shall pay to Buyer an aggregate amount of cash equal to the amount by which the Estimated Purchase Price is greater than the Purchase Price.

(ii) Any payment by Seller pursuant to Section 2.6(e)(i)(B) shall be satisfied by the distribution to Buyer (or as Buyer may direct) of that portion of the Adjustment Escrow Amount equal to such amount (and Buyer and Seller shall give a joint notice and direction to the Escrow Agent to make such distribution); provided that, if the Adjustment Escrow Amount is insufficient to satisfy such amount, Seller shall pay any such remaining amount directly to Buyer (or as Buyer may direct) by wire transfer of immediately available funds on the Settlement Date. If there is any Adjustment Escrow Amount remaining after payment of the amount owed by Seller, Buyer and Seller shall provide a joint notice and direction to the Escrow Agent, pursuant to this Agreement and the Escrow Agreement, for the release of such remaining amount to Seller.

(f) **Fees and Expenses.** Seller and Buyer shall each bear the fees and expenses of their respective auditors, lawyers, accountants and other professional advisors in preparing, reviewing or settling, as the case may be, the Draft Closing Statement. Where the Third Party Accountants have been retained to resolve a dispute, the fees and expenses of the

Third Party Accountants will be borne by Seller and Buyer in inverse proportion as they may prevail on matters resolved by the Third Party Accountants, which proportionate allocations will also be determined by the Third Party Accountants at the time the determination of the Third Party Accountants is rendered on the Draft Closing Statement. For example, should the disputed items total in amount to \$1,000 and the Third Party Accountants award \$600 in favour of Buyer's position, 60% of the costs of the Third Party Accountants' review would be borne by Seller and 40% of the costs would be borne by Buyer.

2.7 Purchase Price Allocation.

The Purchase Price shall be allocated amongst Purchased Shares in accordance with Schedule "C". Buyer and Seller shall report the purchase and sale of the Purchased Shares in any Tax Returns in accordance with Schedule "C".

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer, on the date hereof and on the Closing Date, as follows and acknowledges and confirms that Buyer is relying upon such representations and warranties in connection with the entering into of this Agreement and the consummation of the Transaction:

3.1 Formation and Power.

Seller is a corporation incorporated under the laws of the Province of Ontario and has the power and authority to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party. Seller is duly organized, validly existing and in good standing under the Laws of its jurisdiction of incorporation and is duly licensed, qualified and authorized to own, lease and operate its assets and carry on its business. No Proceedings have been taken or authorized by Seller or by any other Person with respect to the bankruptcy, insolvency, liquidation or winding up of Seller.

3.2 No Conflict.

Except for the Required Regulatory Approvals and the Consents set forth on Schedules 3.4 and 4.5 of the Seller Disclosure Letter, the execution, delivery and performance by Seller of this Agreement and any Ancillary Agreement to which Seller is a party and the completion of the Transactions:

- (a) do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of (i) the Seller's Governing Documents, or (ii) any Contract to which Seller is a party; and
- (b) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the violation of any applicable Law or Authorization.

3.3 Required Authorizations.

Except for the Required Regulatory Approvals, no filing with, notice to, consent, approval or Authorization of, any Governmental Authority is required by Seller as a condition to the lawful completion of the Transaction.

3.4 Required Consents.

Except as set forth in Schedule 3.4 of the Seller Disclosure Letter, there is no Consent required by Seller in connection with the execution and delivery of this Agreement and the Ancillary Agreements or the completion of the Transaction.

3.5 Execution and Binding Obligation.

This Agreement has been, and each Ancillary Agreement to which Seller is a party will prior to the Closing be, duly executed and delivered by Seller and duly authorized by all necessary corporate action, by-laws, ordinances, municipal action or actions required under Seller's Governing Documents and applicable Laws, and constitutes, or will constitute, as applicable, a legal, valid and binding obligation of it, enforceable against it in accordance with its terms subject only to the Enforcement Limitation.

3.6 Title to Purchased Shares.

Seller is the registered and beneficial owner of the Purchased Shares, with good, valid and marketable title thereto, as applicable, free and clear of all Liens. At Closing, Seller shall transfer to Buyer good, valid and marketable title to the entire legal and beneficial interest in the Purchased Shares free and clear of all Liens.

3.7 No Other Agreement to Purchase.

Except for Buyer's rights under this Agreement, no Person has any written or oral Contract, option or warrant or any right or privilege (whether by Law, pre-emptive, contractual or otherwise) capable of becoming such for the purchase of any of the Purchased Shares.

3.8 Litigation.

There is no Proceeding pending or, to the knowledge of Seller, threatened which would in any manner affect, prohibit, restrain or make illegal Seller's ownership of the Purchased Shares or Seller's ability to consummate the Transaction. Seller is not subject to any outstanding Order which would in any manner affect Seller's ownership of the Purchased Shares or affect, prohibit, restrain or make illegal the Transaction.

3.9 No Brokers.

No broker, finder or investment banker or other Person is directly or indirectly entitled to receive from it any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the Transaction.

3.10 Resident of Canada.

Seller is not a non-resident of Canada for purposes of the Tax Act and is either (i) not a partnership or (ii) is a "Canadian Partnership" within the meaning of the Tax Act.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES AS TO THE GROUP ENTITIES

Seller represents and warrants to Buyer, on the date hereof and on the Closing Date, as follows and acknowledges and confirms that Buyer is relying upon such representations and warranties in connection with the entering into of this Agreement and the consummation of the Transaction:

4.1 Formation and Power.

Each Group Entity is duly formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or formation and has the requisite power and authority and is duly licensed, qualified and authorized to own, lease and operate its assets and properties and to conduct the Business as now being conducted by it and to perform all of its obligations under this Agreement and the Ancillary Agreements to which it is a party. Each Group Entity is registered, licensed or qualified to carry on the Business and is in good standing in each jurisdiction in which the Business as now being conducted by it makes such registration, licensing or qualification necessary (which jurisdictions are listed in 4.1 of the Seller Disclosure Letter). No Proceedings have been taken or authorized by a Group Entity or by any other Person with respect to the bankruptcy, insolvency, liquidation, dissolution or winding up of a Group Entity. Seller has made available to Buyer true, complete and correct copies of the Governing Documents of each Group Entity as in effect on the date of this Agreement. No Group Entity is in default under or in violation of any provision of their respective Governing Documents.

4.2 Execution and Binding Obligation.

Each Ancillary Agreement to which a Group Entity is a party will be duly executed and delivered by such Group Entity and duly authorized by all necessary corporate action on the part of such Group Entity, and will constitute a legal, valid and binding obligation of it, enforceable against it in accordance with its terms subject only to the Enforcement Limitation.

4.3 No Conflict.

Except for the Required Regulatory Approvals and the Consents set forth on Schedules, 3.4 and 4.5 of the Seller Disclosure Letter, the execution, delivery and performance by Seller of this Agreement, and the execution, delivery and performance by Seller and the Group Entities of any Ancillary Agreement to which Seller or any Group Entity is a party, and completion of the Transactions:

- (a) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of (i) such Group Entity's Governing Documents and applicable Laws or (ii) any Contract to which such Group Entity is a party;
- (b) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the violation of any applicable Law or Authorization; and
- (c) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the creation or imposition of any Lien on any properties, assets or rights of any Group Entity.

4.4 Required Authorizations.

Other than the Required Regulatory Approvals, no filing with, notice to, consent, approval or Authorization of any Governmental Authority is required of any Group Entity in connection with the completion of the Transactions.

4.5 Required Consents.

Except as set forth in Schedule 4.5 of the Seller Disclosure Letter, there is no Consent required by any Group Entity in connection with the completion of the Transactions.

4.6 Authorizations.

The Group Entities hold all Authorizations required to carry on or required in connection with the Business. Each such Authorization is set forth on Schedule 4.6 of the Seller Disclosure Letter. Each such Authorization held by the Group Entities is valid and in full force and effect and the Group Entities are not in default in any material respect under any such Authorization. No event has occurred that, with or without notice or lapse of time or both, could reasonably be expected to result in the revocation, suspension, lapse or limitation of any such Authorization.

4.7 Capitalization of the Group Entities.

- (a) The authorized and issued capital of the Group Entities and the names of the registered and beneficial owners of the issued Equity Interests of each Group Entity and the number of and type of Equity Interests held by each such securityholder is as set out in Schedule 4.7(a) of the Seller Disclosure Letter.
- (b) Seller owns all of the Purchased Shares with good, valid and marketable title thereto, free and clear of all Liens and preemptive rights or other similar contractual rights. The Purchased Shares have been duly authorized and validly issued as fully paid and non-assessable in compliance with all applicable Laws and ELK's and ESI's Governing Documents.
- (c) The ELK Purchased Shares collectively constitute all (but not less than all) of the issued and outstanding shares and other securities in the capital of ELK and were not issued in violation of any pre-emptive or other contractual right.
- (d) ELK owns all of the Indirect ESI Shares with good, valid and marketable title thereto, free and clear of all Liens and preemptive rights or other similar contractual rights and such Indirect ESI Shares have been duly authorized and validly issued as fully paid and non-assessable in compliance with all applicable Laws and ESI's Governing Documents.
- (e) The ESI Purchased Shares and the Indirect ESI Shares collectively constitute all (but not less than all) of the issued and outstanding shares and other securities in the capital of ESI and were not issued in violation of any pre-emptive or other contractual right.
- (f) Other than the issued and outstanding shares of each Group Entity set out in Schedule 4.7(a) of the Seller Disclosure Letter, (i) there are no outstanding Equity Interests of any Group Entity or any rights, options, securities, debentures, loans or notes held by any Person convertible or exchangeable for any Equity Interest of any Group Entity and

- (ii) no Person other than Buyer has any written or oral agreement, right or privilege for the purchase, subscription, allotment or issuance of any Equity Interest of any Group Entity.
- (g) There are no bonds, debentures, notes or other indebtedness of any Group Entity having the right to vote or consent (or convertible into or exchangeable for securities of such Group Entity having the right to vote or consent) on any matters on which holders of the Equity Interests of such Group Entity may vote.
- (h) No Proceeding is pending or, to the knowledge of Seller, threatened against any Group Entity or Seller asserting that any Person is the holder or beneficial owner of, or has the right to acquire beneficial ownership of, any Equity Interests, or any other voting, equity or ownership interest in such Group Entity. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in or form the basis of any such Proceeding.
- (i) Except as set forth on Schedule 4.7(i) of the Seller Disclosure Letter, no Group Entity is currently subject to any shareholders agreements or other Contracts or understandings with respect to the conduct of the business of any Group Entity or the voting or transfer of any of the Equity Interests of any Group Entity, including any right of first refusal, right of first offer, proxy, voting agreement, voting trust, registration rights agreement or security holders agreement.
- (j) The names and titles of each of the current duly appointed directors and officers of each Group Entity are set forth on Schedule 4.7(j) of the Seller Disclosure Letter.

4.8 Other Interests.

No Group Entity owns or holds, directly or indirectly, any Equity Interest in any Person other than in a Group Entity.

4.9 Financial Statements.

- (a) The Financial Statements have been prepared in accordance with IFRS and each presents fairly, in all material respects: (i) the financial position of the Group Entities as at the respective dates of the relevant Financial Statements; and (ii) the results of the operations and the cash flows of the Group Entities for the periods covered by the relevant Financial Statements. The Financial Statements were derived from the Books and Records. The financial Books and Records have been maintained in accordance with customary business practices and fairly and accurately reflect, in all material respects, on a basis consistent with past periods and throughout the periods involved (A) all Liabilities of the Group Entities that are recorded in books and records in accordance with IFRS and (B) all transactions of the Group Entities including all transactions between the Group Entities, on the one hand, and any Seller on the other hand.
- (b) The Group Entities have not received any written advice or written notification from its independent accountants that it has used any improper accounting practice that would have the effect of either not reflecting or incorrectly reflecting any material properties, assets, Liabilities, revenues, expenses, equity accounts or other accounts in the Books and Records. The system of internal controls over financial reporting of the Group Entities is sufficient to provide reasonable assurance (i) that transactions are recorded as necessary to permit preparation of financial statements in accordance with IFRS, (ii) that transactions

are executed only in accordance with the authorization of management and (iii) regarding prevention or timely detection of the unauthorized acquisition, use or disposition of any material assets of the Group Entities.

- (c) All Accounts Receivable reflected on the Financial Statements reflect bona fide obligations arising from sales actually made or services actually performed in the Ordinary Course and have been properly recorded and reserved against consistent with IFRS and reasonable provision has been made for collection losses and contractual discounts. None of the Accounts Receivable reflected on the Financial Statements are subject to any right of setoff or counter-claim.
- (d) The accounts payable of the Group Entities reflected on the Financial Statements arose from bona fide transactions in the Ordinary Course, and all such accounts payable have either been paid, are not yet due and payable in the Ordinary Course, or are being contested by the Group Entities in good faith.
- (e) A true, complete and correct copy of the Financial Statements has been made available to Buyer.

4.10 Conduct of Business.

Except as set out in Schedule 4.10 of the Seller Disclosure Letter, since the Balance Sheet Date (a) there has not been a Material Adverse Effect, (b) the Group Entities have conducted the Business in the Ordinary Course and (c) no Group Entity has:

- (i) (A) issued, sold, pledged, disposed of, encumbered, agreed or offered to issue, sell, pledge or dispose of or encumber any additional share of, or any options, warrants, calls, conversion privileges or rights of any kind to acquire any Equity Interests of a Group Entity; (B) amended or proposed to amend its Governing Documents or form any Subsidiary; (C) split, combined or reclassified the Equity Interests in its capital or declared, set aside or paid any non-cash dividend or other non-cash distribution payable in stock, property or otherwise with respect to the Equity Interests in its capital; or (D) redeemed, purchased or offered to purchase any Equity Interests in the capital or other securities of a Group Entity;
- (ii) changed its auditors or accountants or received a notice of resignation from any auditor or accountant;
- (iii) reduced the stated capital of any Group Entity;
- (iv) opened any bank account or granted any power of attorney to any Person outside of the Ordinary Course;
- (v) created, incurred, assumed or Guaranteed any Indebtedness or created any Liens upon any of its properties, assets or rights or Guaranteed or otherwise become liable for the Liabilities of any other Person or made any loans or advances to any Person, except in each case, in the Ordinary Course or for Permitted Liens;
- (vi) granted any increase in the rate of wages, salaries, bonuses, compensation or other remuneration of any director, officer, Employee or Contractor except (A) as

required by Contract in effect on the date hereof or (B) pursuant to any Benefit Plan in effect on the date hereof;

- (vii) entered into, adopted, amended, modified or terminated any Contract with any current or former Employee, officer, director, securityholder or Contractor providing for a change of control, retention, transaction-related or similar bonus;
- (viii) terminated or hired any executive officers or members of senior management entitled to annual compensation of more than \$100,000 per year;
- (ix) entered into, amended, assigned, subleased, granted any waiver under, exercised any option under, surrendered or terminated any Material Contract;
- (x) entered into, adopted, amended or renewed any Collective Agreement or entered into negotiations in connection therewith, except as required under applicable Law;
- (xi) adopted, amended, modified or terminated any Benefit Plan, or increased the benefits to which any directors, officers, Employees, Contractors or other service providers of any Group Entity are entitled under any Benefit Plan, other than such adoptions, amendments, modifications or terminations which were required pursuant to applicable Laws or renewals made in the Ordinary Course;
- (xii) taken any action to accelerate any payment, right to payment or benefit, vesting of any right to payment of benefit or the funding of any payment, right to payment or benefit, in each case, payable or to become payable to any director, officer, Employee or Contractor of any Group Entity;
- (xiii) terminated, released or waived any non-competition, non-solicitation, no-hire, non-disclosure, confidentiality, non-disparagement, or other restrictive covenant agreement or obligation of any director, officer, Employee or Contractor or other service provider of any Group Entity;
- (xiv) except where such material properties or assets have become obsolete, sold, leased, assigned, transferred or otherwise disposed of any of its material properties or material assets;
- (xv) acquired (by merger, consolidation, acquisition of stock or assets or otherwise) any Person or enterprise or assets and properties with an aggregate value in excess of \$100,000;
- (xvi) except as set out in the Capital Program Budget as previously provided to the Buyer, made any capital expenditures or commitments therefor in excess of \$50,000 in the aggregate;
- (xvii) initiated, compromised or settled any Proceeding;
- (xviii) entered into any Contract with a Related Party;
- (xix) made any material change in its accounting principles and practices which was not required by IFRS;

- (xx) cancelled any insurance policy or reduced the types and levels of insurance in effect in respect of any of its properties or assets (including the Easement Lands and the Owned Real Property) that would reasonably be expected to be material to the Business;
- (xxi) launched any new line of business or exited any line of business;
- (xxii) adopted a plan of complete or partial liquidation, dissolution, merger, consolidation or recapitalization;
- (xxiii) taken any action or failed to take any action which action or failure to act would result in the change, loss, expiration or surrender of, or the loss of any benefit under, or reasonably be expected to cause any Governmental Authority to institute any Proceeding for the suspension, revocation or limitation of rights under, any Authorization necessary to conduct its business as now conducted;
- (xxiv) made or rescinded any material express or deemed election, information schedule, return or designation relating to Taxes, or filed any amended Tax Returns;
- (xxv) made a request for a Tax ruling or voluntary disclosure or entered into any agreement with any Governmental Authority with respect to Taxes;
- (xxvi) settled or compromised any claim, assessment, reassessment, Liability, action, suit, litigation, Proceeding, arbitration, investigation, audit or controversy relating to a material amount of Taxes;
- (xxvii) surrendered any right to claim Tax abatement, reduction, deduction, exemption, credit or refund;
- (xxviii) changed any annual Tax accounting period;
- (xxix) taken any action with respect to the computation of Taxes or the preparation of Tax Returns that is in any material respect inconsistent with past practice;
- (xxx) made any changes to methods, principles, policies or practices of reporting income, deductions or accounting for Tax purposes (with respect to those employed prior to the date of this Agreement), except as required under applicable Laws;
- (xxxi) consented to the extension or waiver of the limitation period applicable to any material Tax matter; or
- (xxxii) agreed in writing to do anything prohibited by this Section 4.10.

4.11 No Undisclosed Liabilities.

- (a) Except as set forth in Schedule 4.11(a) of the Seller Disclosure Letter, neither Group Entity has any Liabilities, whether or not of the type to be reflected in financial statements prepared in accordance with IFRS, other than (i) Liabilities reflected or reserved against in the Financial Statements and (ii) current Liabilities incurred in the Ordinary Course since the Balance Sheet Date, which did not result from any default, tort or breach of Contract, and which will be included in the Closing Statement.

- (b) The Group Entities have no Indebtedness of any type (whether accrued, absolute, contingent, matured, unmatured or other and whether or not required to be reflected in financial statements prepared in accordance with IFRS) other than Indebtedness set out on Schedule 4.11(b) of the Seller Disclosure Letter. With respect to each item of Indebtedness, other than as set forth in Schedule 4.11(b) of the Seller Disclosure Letter under the heading “Defaults”, the applicable Group Entity is not in default, no material payments are past due, and no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, could constitute a default by such Group Entity under any item of Indebtedness. Neither Group Entity has received any notice of a default, alleged failure to perform or any offset or counterclaim with respect to any item of Indebtedness that has not been fully remedied and withdrawn.
- (c) Other than as reflected in Schedule 4.11(c) of the Seller Disclosure Letter, the consummation of the Transactions will not cause a default, breach or an acceleration, automatic or otherwise, of any conditions, covenants or any other terms of any item of Indebtedness.

4.12 Material Contracts.

- (a) Schedule 4.12 of the Seller Disclosure Letter sets out a true, complete and correct list of the following Contracts to which any Group Entity is a party or by which any Group Entity or any of its assets or properties may be bound:
 - (i) any Contract for the acquisition, disposition, lease, sublease, use or occupation of any real property;
 - (ii) any Contract mortgaging, pledging or otherwise placing a Lien on any portion of the assets of any Group Entity;
 - (iii) any Contract for the purchase of materials, supplies, goods, services, equipment or other assets or for, or requiring capital expenditures, buildings or other improvements or infrastructure, in each case providing for either (A) annual payments by any Group Entity of \$50,000 or more or (B) payments by any Group Entity of \$250,000 or more over the term of the Contract;
 - (iv) any distribution, sales or other similar Contract providing for the sale by any Group Entity of materials, supplies, goods, services, equipment or other assets that provides for either (A) annual payments to a Group Entity of \$50,000 or more, calculated based on any Group Entity’s most recently completed fiscal year or (B) payments to a Group Entity of \$250,000 or more over the term of the Contract;
 - (v) any partnership, joint venture, co-ownership, declaration of bare trust, franchise, management or other similar Contract;
 - (vi) any Contract relating to Indebtedness or the deferred purchase price of real or personal property (in either case, whether incurred, assumed, Guaranteed or secured by any asset), in each case, for an amount in excess of \$250,000;
 - (vii) any Contract for the lease of personal property by any Group Entity, anticipated to involve annual payments by such Group Entity in excess of \$25,000;

- (viii) any employment or services agreements involving annual base salary or wage payments or annual fee payments (including bonuses and commissions) by any Group Entity to any Employee or Contractor in excess of \$100,000;
- (ix) any Contract for deferred compensation, termination, severance, bonus, retirement or change of control payments;
- (x) any Contract in respect of Intellectual Property Rights, other than in respect of commercially available off-the-shelf software or software as a service;
- (xi) any Contracts pursuant to which Seller or the Group Entities are required to give any notice to or obtain any approval or consent from, or make any filing with, any Person in connection with the execution and delivery of this Agreement and the Ancillary Agreements or the consummation or performance of any part of the Transaction;
- (xii) any Contract that: (A) limits the freedom of any Group Entity to compete in any line of business or with any Person or in any geographic area or to solicit, hire, retain or attempt to solicit, hire or retain any employee, customer or supplier of any Person; or (B) provides for "Most Favored Nations" terms or establishes an exclusive sale or purchase obligation with respect to any product or any geographic area;
- (xiii) any Contract with Seller or any Related Party;
- (xiv) any Contract that requires a commitment by any Group Entity to make a capital expenditure or to purchase a capital asset requiring payments in excess of \$100,000;
- (xv) any Contract that (A) contains any indemnification rights or obligations on behalf of any Group Entity other than any such rights incurred in the Ordinary Course or (B) obligates any Group Entity to make contingent payments under any purchase price adjustment, earn-out or similar provisions;
- (xvi) any Contract granting any Person a first-refusal, first-offer or similar preferential right to purchase or acquire any material right, asset or property, or any Equity Interests of any Group Entity;
- (xvii) any Collective Agreement;
- (xviii) any Contract with a Governmental Authority;
- (xix) any connection agreement, interconnection agreement or similar type agreement, including any such agreement with Hydro One Networks Inc.;
- (xx) any Contract with an Indigenous Group;
- (xxi) any Contract under which any Group Entity has granted any power of attorney; or
- (xxii) any Contract relating to the (A) disposition or acquisition since January 1, 2022; or (B) future disposition or acquisition, in each case, by or to any Group Entity of

any business, business segment, division, product line, assets, properties or Person (whether by merger, consolidation or other business combination, sale or purchase of securities, sale or purchase of assets or otherwise), excluding, in each case, dispositions or acquisitions of inventory in the Ordinary Course.

- (b) No party to a Material Contract is in breach or violation of, or default (in each case, with or without the giving of notice, the lapse of time, or both, or the happening of any other event or condition) under, any Material Contract. No Group Entity has received or been given any notice of breach or default under any Material Contract. No event or circumstance has occurred that, with notice or lapse of time or both, would constitute a breach of or default under any Material Contract or result in or permit or cause any loss other than change of any rights or benefits under any Material Contract.
- (c) Each Material Contract is in full force and effect, constitutes a legal, valid and binding obligation of the parties thereto, and is enforceable in accordance with its terms against the parties thereto, in accordance with its terms, subject only to the Enforcement Limitation.
- (d) No party to any Material Contract has given any written notice of termination or cancellation of any Material Contract or that it intends to seek to terminate or cancel any Material Contract (whether as a result of the Transaction or otherwise).
- (e) Complete and accurate copies of all of the Material Contracts (and, in the case of an oral Material Contract, a written description of the material terms of such contract) have been made available to Buyer.

4.13 Litigation.

Except as set out in Schedule 4.13 of the Seller Disclosure Letter, there are no Proceedings or investigations pending or, to the knowledge of Seller, threatened against or involving any Group Entity or before or by any Governmental Authority. No Group Entity is subject to any Order. No event has occurred, and, to the knowledge of Seller, no circumstance exists, which could reasonably be expected to constitute or result in (with or without the lapse of time) any Proceeding or Order.

4.14 Compliance with Laws.

Except as disclosed on Schedule 4.14 of the Seller Disclosure Letter, (i) the Group Entities are complying, and have been in material compliance with all applicable Laws; and (ii) the Group Entities are and have been in material compliance with all applicable Orders .

4.15 Ethical Practices.

None of the Group Entities, nor to the knowledge of Seller, any Representative of the Group Entities: (a) has violated or is violating in any material respect any anti-corruption or anti-bribery Law applicable to the Group Entities, including Laws governing commercial bribery (the “**Anti-Corruption Laws**”); (b) has, directly or indirectly, made, offered, paid, authorized, facilitated, or promised any payment, contribution, gift, entertainment, bribe, rebate, kickback, financial or other advantage, or anything else of value, regardless of form or amount, to any: (i) official or employee of a Governmental Authority; (ii) official or employee of an enterprise that is owned or controlled by a Governmental Authority; (iii) political party, political official, or candidate for political office; (iv) official or employee of a public international organization; or (v) other Person acting in an official capacity for or on behalf of any such Governmental Authority, enterprise, party, or organization, in each case (i) – (v) that violates the Anti-

Corruption Laws; (c) is, or has been, under administrative, civil, or criminal investigation, indictment, suspension, debarment or audit by any Governmental Authority, in connection with alleged or possible violations of the Anti-Corruption Law or (d) has received written notice from, or made a voluntary disclosure to, any Governmental Authority regarding alleged or possible violations of the Anti-Corruption Laws.

4.16 Title to and Sufficiency of Assets.

- (a) The Group Entities, own and have good and valid title to, or a valid leasehold interest in, or a valid license in, as applicable, all of the properties and assets used in the conduct of the Business (including (i) all properties and assets reflected as owned, leased or licensed by the Group Entities in the Financial Statements and Closing Statement and (ii) the Owned Real Property and Easement Lands), free and clear of all Liens, other than Permitted Liens. Any Permitted Lien on such properties, rights or assets does not materially interfere with the current use of any such property, right or asset or materially detract from the value of such property, right or asset.
- (b) No Person other than the Group Entities, owns any property, right or assets which are material to the Business, except for the licensors of the Intellectual Property Rights licensed to one or more Group Entities for use in the Business. No Person has by Contract, option, right or privilege for the purchase or acquisition of any property, assets or rights of any Group Entity.
- (c) The property and assets of the Group Entities are in sufficient operating condition and repair having regard to their age and use for the continuation of the Business in the Ordinary Course, and are adequate for the uses to which they are being put, and none of such property or assets are in need of maintenance or repairs except for ordinary, routine maintenance and repairs. The property and assets of the Group Entities are sufficient for the continued conduct of the Business after Closing in substantially the same manner as conducted prior to the Closing and constitute all of the property and assets necessary to carry on the Business in substantially the same manner as conducted prior to the Closing.
- (d) The Group Entities do not otherwise conduct any business, have any operations or hold any assets that do not form part of the Business or the activities incidental thereto as of the date hereof.
- (e) The Group Entities own or have the necessary rights to all equipment and infrastructure necessary for their distribution of electricity to customers in accordance with all applicable Laws, all Authorizations and all Material Contracts.

4.17 Owned Real Property.

Schedule 4.17 of the Seller Disclosure Letter sets forth a complete list of all real property owned by a Group Entity (“**Owned Real Property**”). With respect to each parcel of Owned Real Property:

- (a) the identified Group Entity has valid title to such property, free and clear of all Liens other than Permitted Liens;
- (b) except as set forth in Schedule 4.17(b) of the Seller Disclosure Letter, there are no leases or subleases granting to any Person the right of use or occupancy of any portion of the parcels of the Owned Real Property;

- (c) there are no outstanding options to purchase, lease or use, or rights of first refusal to purchase any of the Owned Real Property, or any portions thereof or interests therein or Contracts relating to the right to receive any portion of the income or profits from the sale, operation or development thereof;
- (d) the Owned Real Property and its current use, occupancy and operation do not constitute a non-conforming use in any material respects under any applicable building, zoning, subdivision or other land use or similar Laws; and
- (e) the Owned Real Property and each part thereof is in good condition and repair having regard for age and use, and free from material defects reasonable wear and tear excepted.

4.18 Leased Real Property.

No Group Entity is a party to, or under any agreement to become a party to, any lease with respect to real property.

4.19 Easements

- (a) To the Seller's knowledge, the Group Entities hold all Easements required for the conduct of the Business of the Group Entities as currently conducted.
- (b) To the Seller's knowledge, all such Easements are valid, enforceable and in good standing and each Group Entity has full right of access and use thereunder to allow the Group Entities to operate their Business in the manner currently conducted.
- (c) To the Seller's knowledge, no Group Entity has defaulted or breached any of its obligations to be performed under any of the Easements, including obligations of payment thereunder, and, to the knowledge of the Seller, no event has occurred or circumstance exists that, with the delivery of notice, the passage of time or both, could constitute a default under any Easement.
- (d) With respect to those Easements situated on Easement Lands which are owned by a municipality, including, but not limited to, all Easement Lands which form part of a public highway or public right-of-way (collectively, the "**Municipal Easement Lands**"), the locations of all structures, equipment or facilities required for the conduct of the Business of the Group Entities as currently conducted and which are constructed or installed on such Municipal Easement Lands have been agreed upon and approved in all respects by the applicable municipality.

4.20 Expropriation and Condemnation.

None of the assets, properties and rights of the Group Entities (including all Owned Real Property and Easement Lands) or used in the Business are subject to any expropriation, condemnation or eminent domain proceeding, nor has any Group Entity received any notice of pending or threatened expropriation or condemnation. To the knowledge of Seller, no Governmental Authority or other Person intends to expropriate or condemn all or any part of any such assets, properties or rights, or to alter its land use by-law or official community plan or its road or traffic plans so as to materially adversely affect the operation of the Business or access to or egress from the Owned Real Property or the Easement Lands. There is and

has been no material damage, destruction or loss to, or any other casualty event in respect of, any of the assets or properties of the Group Entities, whether or not covered by insurance.

4.21 Environmental Matters.

- (a) The Group Entities and the operation of the Business are and have been in material compliance with applicable Environmental Laws.
- (b) Except as set out in Schedule 4.21(b) of the Seller Disclosure Letter, there are no Hazardous Materials located at, in, on or under, or migrating to or from, any of the Easement Lands or Owned Real Properties resulting from the operation of the Business or for which any Group Entity may be liable under any applicable Environmental Law. True, complete and correct copies of all environmental reports listed on 4.21(b) of the Seller Disclosure Letter have been made available to Buyer.
- (c) The Group Entities have not caused or permitted the generation, manufacturing, refining, treatment, transportation, storage, handling, Release, disposal of, transfer, production or processing of any Hazardous Material, except in compliance in all material respects with all, and for which the Group Entities do not have Liability under any, applicable Environmental Laws.
- (d) Except as set out in Schedule 4.21(d) of the Seller Disclosure Letter, the Group Entities have not been required by any Governmental Authority or Environmental Laws to (i) file any notice or information with any Governmental Authority relating to any potential or actual contamination of, or Release, migration or management of Hazardous Material at, any of the Owned Real Properties or Easement Lands any other property; or (ii) perform any environmental closure, decommissioning, rehabilitation, restoration, containment or post-remedial investigation or monitoring or other remediation or response action on, about or in connection with the Owned Real Properties or Easement Lands or any other property.
- (e) True, complete and correct copies of all material reports and documents relating to environmental, health or safety matters affecting or that may be affecting the Group Entities or any of the Owned Real Properties or the Easement Lands prepared in the previous three (3) years which are in the possession or under the control of the Group Entities have been made available to Buyer.

4.22 Indigenous Matters

- (a) None of the assets, properties and rights of the Group Entities (including all Owned Real Property and Easement Lands) are located on any real property whose use and benefit is set apart as a reserve, as that term is defined in the *Indian Act* (Canada).
- (b) No Indigenous Group has alleged that any Group Entity or the operation of the Business (including the issuance of any Authorization and their use of the Owned Real Property and the Easement Lands) is not in material compliance with any applicable Laws.
- (c) No Proceeding is in process, pending or, to the knowledge of Seller, threatened in writing against any of the Group Entities by or on behalf of any Indigenous Group.
- (d) No Group Entity has received notice of, nor, to the knowledge of Seller, is there any Indigenous Claim made or threatened by any Indigenous Group which would affect in any

material respect any Owned Real Property, Easement Lands, Group Entity and/or operation of the Business. To the knowledge of Seller, no Indigenous Group has opposed the operation and/or business of any Group Entity, including by (i) blockading and/or occupying the Owned Real Property or the Easement Lands, (ii) objecting to any Authorization sought or otherwise, applied for by any Group Entity or related to any operation or business conducted by any Group Entity, or (iii) protesting against any Group Entity.

- (e) None of the Group Entities has engaged in any discussions or negotiations in respect of any written or oral agreements with any Indigenous Group to provide benefits, pecuniary or otherwise, with respect to the Business, any Owned Real Property and/or any Easement Lands.

4.23 Intellectual Property.

- (a) Except as set out in Schedule 4.23(a) of the Seller Disclosure Letter, the Group Entities do not own, hold or license any:
 - (i) registrations and pending applications for trademarks and trade names (the **“Trademarks”**);
 - (ii) registrations and pending applications for patents (whether utility or design) (**“Patents”**);
 - (iii) registrations and pending applications for copyrights (**“Copyrights”**);
 - (iv) Internet addresses, registered domain names (the **“Domain Names”**), social media accounts, websites and web pages; and
 - (v) software other than commercially available off-the-shelf software or software as a service (the **“Software”**).
- (b) Except as set out in Schedule 4.23(b) of the Seller Disclosure Letter, there are no Trademarks, Patents, Copyrights, Domain Names and Software owned by, licensed to or used by Seller that are used in the conduct of the Business. The consummation of the Transaction will not alter or impair the Group Entities’ right in and to any Intellectual Property Rights used by the Group Entities.
- (c) The Group Entities own (free and clear of all Liens other than Permitted Liens), or have the licensed rights to use, all Intellectual Property Rights used in the conduct of the Business.
- (d) There is no Proceeding pending or, to the knowledge of Seller, threatened, against the Group Entities challenging the validity, enforceability or scope of any Trademarks, Patents, Copyrights or Domain Names or the Group Entities’ rights thereto.
- (e) There is no Proceeding pending or, to the knowledge of Seller, threatened, against the Group Entities to the effect that the Group Entities infringe or infringed, or misappropriate or misappropriated, any Intellectual Property Rights of any third party.

- (f) To the knowledge of Seller, there is no infringement or misappropriation by third parties of any Intellectual Property Rights owned by the Group Entities.
- (g) The conduct of the Business by Group Entities does not infringe or misappropriate, and since January 1, 2022, has not infringed or misappropriated, any Intellectual Property Rights of any Person.

4.24 Computer Systems.

- (a) None of the records, systems, controls, data (including Personal Information) or information of the Group Entities is recorded, stored, maintained, operated or otherwise wholly or partly dependent upon or held by any means (including any electronic, mechanical or photographic processes whether computerized or not) which (including all means of access thereto and therefrom) are not under the exclusive ownership and direct control of the Group Entities other than any offsite backup or disaster recovery arrangements or which is with third parties in the Ordinary Course.
- (b) The Computer Systems have been adequately maintained and have adequate capability and capacity for current requirements of the Group Entities for the processing and other functions required to be performed for the purposes of the Business.
- (c) The Group Entities have procedures and measures that meet the applicable Data Security Requirements and that are designed to ensure the internal and external security of the Computer Systems including procedures for taking and storing, on site and off site, backup copies of computer programs and data, and measures designed to secure the Computer Systems from unauthorized access and use and Data Security Incidents.
- (d) To the knowledge of Seller, no person is in a position, by virtue of their rights in, knowledge of or access to any part of the Computer Systems and databases used and operated by the Group Entities (including software), lawfully to prevent or impair the proper and efficient function of the Computer Systems or to demand any payment in excess of any current license fee or in excess of reasonable remuneration for services rendered or to impose any onerous conditions, in order to preserve the proper and efficient functioning of the Computer Systems in the future.
- (e) The data (including Personal Information) collected, held and utilized by the Group Entities in the Business, and/or collected from or transferred to the Group Entities' customers and/or business partners has been lawfully obtained and the Group Entities are entitled to use the same, transfer the same and grant such rights therein as it grants to its customers and/or business partners in respect of the use of such data.

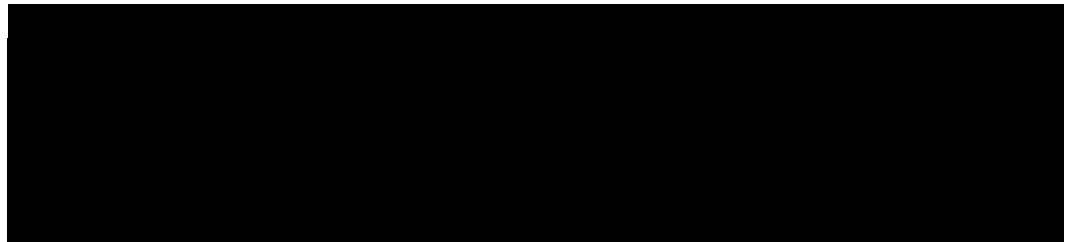
4.25 Insurance.

Schedule 4.25 of the Seller Disclosure Letter sets out a list of all insurance policies which are maintained by the Group Entities. All such policies are in full force and effect and, to the knowledge of Seller, no event has occurred which, with notice or lapse of time or both, would constitute a material breach, default, or permit termination, modification or exclusion under any such policy. Since January 1, 2022, the Group Entities have not received any written notice or threat of cancellation, termination or modification or material premium increase of any such material insurance policies, nor has, since January 1, 2022, been refused any material coverage pursuant thereto. The Group Entities are not in default with respect to any such policies, nor have the Group Entities failed to give any notice or to present any material claim under

any such policy in a timely fashion. No written notice or threat of cancellation, termination or material premium increase has been received by the Group Entities. True, complete and correct copies of each of the insurance policies set forth in Schedule 4.25 of the Seller Disclosure Letter, together with all amendments, extensions and additions thereto, have been delivered to Buyer for review. Schedule 4.25 of the Seller Disclosure Letter sets out all material pending claims made under any insurance policy by any Group Entity since January 1, 2022.

4.26 Employment and Labour Matters.

- (a) Schedule 4.26(a) of the Seller Disclosure Letter sets forth a complete and accurate list as of the close of business on the date hereof of all full time Employees, and each of their positions, annual salary or hourly wage rates, and incentive targets (where applicable). Schedule 4.26(a) of the Seller Disclosure Letter also lists, as of the date hereof, with respect to full time Employees in the position of vice president or above, each of their hire date and active or inactive status (including last date of active employment, type of leave and the expected date of return (if known)). Attached to Schedule 4.26(a) of the Seller Disclosure Letter is a copy of the most recent payroll list in respect of part time Employees.
- (b) Schedule 4.26(b) of the Seller Disclosure Letter sets forth complete and accurate information as of the close of business on the date hereof as to each Contractor engaged by the Group Entities and their fees, incentive targets (where applicable), length of engagement with the Group Entities, location of services, and whether they are subject to a written Contract. Each Contractor who is disclosed in the Seller Disclosure Letter has been properly classified as an independent contractor and none of the Group Entities has received any notice from any Governmental Authority disputing such classification.
- (c) To the knowledge of the Seller, the Group Entities do not have any direct or indirect material Liability with respect to the misclassification of any person as an independent contractor rather than as an employee, or as eligible or not eligible for overtime pay, or for participation in or exclusion from any Benefit Plan, or with respect to any temporary employees, and, to the knowledge of Seller, there exists no state of facts which could reasonably be expected to give rise to any such material Liability.
- (d) The Group Entities have delivered to Buyer complete and accurate copies of all current employee manuals, handbooks, and other material written policies relating to the employment of the current Employees (including any policies relating to severance or termination pay).
- (e) The Group Entities have delivered to Buyer complete and accurate copies of the forms of Contracts used in respect of all Employees whose Contracts are not captured by Section 4.12(a)(viii), and the Contracts of all such Employees are substantially in the forms of the Contracts provided to Buyer and do not materially deviate therefrom.



[REDACTED]

- (g) The Group Entities are and have been in material compliance with all Laws respecting employment, employment practices and labour, including pay equity, wages, hours of work, overtime, human rights, discrimination, harassment, hostile work environment, retaliation, workers' compensation or workplace safety and insurance, occupational health and safety and immigration. There are no pending or, to the knowledge of Seller, threatened claims, complaints, investigations, Orders or other Proceedings under any Laws respecting employment, employment practices and labour, nor, to the knowledge of Seller, is there a basis for any such claim, complaint, investigation, Order or other Proceeding under any such Laws.

[REDACTED]

[REDACTED]

[REDACTED]

- (k) There are no material outstanding and unresolved or pending, inspections, reports, Orders or charges made under any occupational health and safety Law against any Group Entity. Since August 31, 2018, the Group Entities have each complied in all material respects with any Order issued under any occupational health and safety Law and, to the knowledge of Seller, there are no appeals of any Order under any occupational health and safety Law currently outstanding. Since January 1, 2022, there have been no fatal or critical accidents involving any Employees where a Group Entity is in violation of any occupational health and safety Law in any respect. Buyer has been provided true and correct copies of all orders, inspection reports and charges made against any Group Entity or otherwise related to the Business under applicable occupational health and safety Law since January 1, 2022.

- (l) There are no outstanding assessments, penalties, fines, liens, charges, surcharges, or other amounts due or owing pursuant to any workplace safety and insurance legislation or

workers' compensation legislation. None of the Group Entities have been assessed or reassessed in any material respect under such legislation during the past four (4) years and, to the knowledge of Seller, no audit of any Group Entity is currently being performed by the Ontario Workplace Safety and Insurance Board or any other applicable Governmental Authority pursuant to any applicable workplace safety and insurance legislation or any applicable workers' compensation legislation. There are no claims or, to the knowledge of Seller, potential claims which may materially adversely affect the accident cost experience in respect of the Business.

- (m) All amounts due or accrued for all salary, wages, fees, incentive compensation (including bonuses and commissions), vacation with pay, sick days, benefits and other direct compensation for services in respect of each Employee and Contractor have either been paid or are accurately reflected in the Books and Records of the Group Entities. None of the Group Entities are (i) delinquent with respect to payments or the provision of compensation and benefits to any of its Employees or Contractors (or former employees, independent contractors or consultants) for any salaries, wages, fees, incentive compensation (including bonuses and commissions), vacation with pay or other direct compensation for any services performed by them or amounts required to be reimbursed to such Persons, or (ii) liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment or workers' compensation benefits, or social security (other than immaterial routine payments to be made pursuant to claims in the Ordinary Course of Business or as required by applicable Law).



4.27 **Benefit Plans.**

- (a) Schedule 4.27(a) of the Seller Disclosure Letter lists, as of the date hereof, all material employee benefit, fringe benefit, supplemental unemployment benefit, incentive (including bonus and commission), change of control, retention, severance, termination, pension, retirement and retirement savings, equity incentive, stock option, stock purchase, stock appreciation, profit sharing, deferred compensation, health, welfare, medical, dental, disability, life insurance and any other or similar plans, agreements, policies, programs, arrangements or practices relating to any current or former director, officer, Employee or Contractor of any of the Group Entities (or any dependent, survivor, beneficiary or estate thereof) maintained and sponsored by any of the Group Entities, or with respect to which any of the Group Entities contribute or are required to contribute or have any Liability (contingent or otherwise), whether written or oral, funded or unfunded, insured or self-insured, registered or unregistered, other than a benefit plan required to be maintained or contributed to by statute (each such plan, agreement, policy, program, arrangement or practice, a "**Benefit Plan**").
- (b) Seller has available to Buyer true, complete and correct copies of all the Benefit Plans as amended as of the date hereof (or if oral, summaries thereof), together with all material related documentation including, without limitation, funding agreements, summary plan descriptions, the most recent actuarial reports (if applicable) and all material correspondence with all Governmental Authorities or other relevant Persons related to the Benefit Plans. The employee booklets and summary plan descriptions prepared for and

issued concerning each Benefit Plan, accurately and fairly describe the benefits provided under each Benefit Plan.

- (c) Each Benefit Plan has been and is established, registered, sponsored, maintained, funded and administered in all material respects according to its terms and applicable Laws and there are no material outstanding violations or defaults thereunder nor any Proceeding current or pending or, to the knowledge of Seller, threatened with respect to any Benefit Plan (other than routine claims for payment of benefits), nor have there been any since January 1, 2022. Except as set out in Schedule 4.27(c) of the Seller Disclosure Letter, to the knowledge of Seller, there exists no state of facts which could reasonably be expected to give rise to any such Proceeding in respect of any Benefit Plan.
- (d) Subject to the requirements of applicable Laws and the terms of any applicable Collective Agreement, no promise or commitment to increase benefits under any Benefit Plan or to adopt any additional Benefit Plan has been made.
- (e) The Group Entities have paid all contributions and premiums in respect of each Benefit Plan in a timely fashion in accordance with the terms of each Benefit Plan, Collective Agreement and applicable Laws, and all Benefit Plans are and have been funded in accordance with applicable Laws and, as of the date hereof, there are no current unfunded obligations with respect to any Benefit Plan.
- (f) No event has occurred and no condition or circumstance exists that has resulted in or could reasonably be expected to result in any Benefit Plans being ordered, or required to be, terminated or wound up in whole or in part, having its registration under applicable Laws refused or revoked, being placed under the administration of any trustee or receiver or Governmental Authority or being required to pay any material taxes, penalties, payments or levies under applicable Laws.
- (g) Except for the plans listed on Schedule 4.27(a) of the Seller Disclosure Letter, the Group Entities do not provide post-employment or post-retirement benefits for any current or former Employees, directors or officers of the Group Entities, or any dependent, survivor, beneficiary or estate thereof, except for benefits required to be provided after termination of employment without cause pursuant to applicable Laws relating to employment standards
- (h) Other than the OMERS Plan, no Benefit Plan is (i) a “registered pension plan” within the meaning of subsection 248(1) of the Tax Act, or is otherwise subject to applicable minimum pension standards legislation in Canada; (ii) a “retirement compensation arrangement” within the meaning of subsection 248(1) of the Tax Act; or (iii) a “salary deferral arrangement” within the meaning of subsection 248(1) of the Tax Act. Other than the OMERS Plan, no Benefit Plan is a “multi-employer plan” within the meaning of subsection 147.1(1) of the Tax Act or a “multi-employer pension plan” within the meaning of subsection 1(1) of the *Pension Benefits Act* (Ontario) or as such similar terms are defined in similar pension standards legislation of Canada or any province of Canada.
- (i) Neither the execution, delivery or performance of this Agreement, nor the consummation of the transactions contemplated herein will or may (i) increase or accelerate vesting of any entitlement, or provide any additional rights or benefits, under any Benefit Plan, including any change of control, retention, golden parachute, bonus or similar payment, (ii) result in any severance, termination pay or other payment or benefits becoming due, or increase the

amount of any compensation or benefits due, to any current or former Employee, officer, director or Contractor, or (iii) subject to applicable Laws and the terms of the applicable Benefit Plan, limit or restrict the ability of Buyer or its Affiliates to merge, amend or terminate any Benefit Plan.

- (j) All benefits under the Benefit Plans have been properly accrued in the Financial Statements in accordance with generally accepted accounting principles.
- (k) No insurance policy or any other agreement affecting any Benefit Plan requires or permits a retroactive increase in contributions, premiums or other payments due under such insurance policy or agreement. The level of reserves under each Benefit Plan which provides group benefits and contemplates the holding of such reserves is reasonable and sufficient to provide for all incurred but unreported claims.
- (l) All data necessary to administer each Benefit Plan is in the possession of the Group Entities or their service providers and is in a form which is sufficient for the proper administration of such Benefit Plan in accordance with its terms and all applicable Laws and, to the knowledge of Seller, such data is complete and correct.
- (m) Except as set forth in Schedule 4.27(m) of the Seller Disclosure Letter, (i) only Employees, directors, former employees and former directors, in each case, of the Group Entities (or any spouses, dependents, survivors or beneficiaries of any such Persons) participate in the Benefit Plans and no entity other than the Group Entities are a participating employer under any Benefit Plan, and (ii) all Benefit Plans are sponsored only by the Group Entities.

4.28 Related Party Transactions.

Schedule 4.28 of the Seller Disclosure Letter sets forth a true, complete and correct list of all balances, transactions, arrangements and/or Contracts between the Group Entities, on the one hand, and a Related Party to the Group Entities, on the other hand (all such transactions set forth or required to be set forth thereon, the “**Related Party Transactions**”).

4.29 Bank Accounts and Powers of Attorney.

Schedule 4.29 of the Seller Disclosure Letter sets forth a true, complete and correct list, as of the date hereof, of (a) the name and address of each bank with which the Group Entities have an account or safety-deposit box, (b) the name of each Person authorized to draw thereon or have access thereto, (c) the account number of each bank account of the Group Entities and (d) all powers of attorney granted by the Group Entities to any Person, copies of which have been delivered to Buyer.

4.30 Books and Records.

The Books and Records have been maintained, in all material respects, in accordance with all applicable Laws, and are complete and accurate in all material respects. The corporate minute books of the Group Entities contain complete and accurate minutes of all meetings and other proceedings of the directors (or any committee thereof) and shareholders of the Group Entities held since January 1, 2022, and all such meetings were duly called and held and the share certificate books, central securities register (or equivalent) and registers of directors and officers (as the case may be) of the Group Entities are complete and accurate in all material respects.

4.31 Tax Matters.

- (a) Except as set forth in Schedule 4.31(a) of the Seller Disclosure Letter, each Group Entity has filed or caused to be filed, on a timely basis with the appropriate Governmental Authority, in the manner prescribed by applicable Law, all Tax Returns which are required to be filed by or with respect to it. The information contained in such Tax Returns is correct and complete in all material respects, and were prepared in substantial compliance with all applicable Laws and regulations.
- (b) Each Group Entity has paid all Taxes which are due and payable as required by applicable Law (whether or not shown on any Tax Return or assessed or reassessed by any Governmental Authority), and has paid all assessments and reassessments it has received in respect of Taxes. Each Group Entity has paid all installments on account of Taxes for the current taxation year. Each Group Entity has made adequate provision in the Books and Records and the Financial Statements for all Taxes for the period covered thereby. Since the Interim Balance Sheet Date, each Group Entity has only incurred Tax Liabilities in the Ordinary Course. Neither Group Entity has any Liability for any Taxes other than those provided for in the Financial Statements and those arising in the Ordinary Course since the date of the Financial Statements.
- (c) There are no outstanding agreements, arrangements, waivers or objections extending the statutory limitations period or providing for an extension of time with respect to the assessment or reassessment of Taxes of either Group Entity or the filing of any Tax Return by, or any payment of Taxes by, either Group Entity, nor is there any outstanding request for any such agreement, waiver, objection or arrangement. Neither Group Entity has made any elections, designations or similar filings with respect to Taxes or entered into any agreement in respect of Taxes or Tax Returns, in either case in the previous three (3) years, that have an effect for any period ending after the Closing Date except as delivered to Buyer. Neither Group Entity has requested, received or entered into any advance Tax rulings or advance pricing agreements from or with any Governmental Authority.
- (d) Except as set forth in Schedule 4.31(d) of the Seller Disclosure Letter, no material deficiencies or assessments or reassessments for any Taxes have been proposed, asserted or assessed in writing by any Governmental Authority against either Group Entity that are still pending. To the knowledge of Seller, there are no matters (including any Tax Return filed by either Group Entity) under discussion with or by any Governmental Authority in respect of Taxes. There are no proceedings, claims, demands, audits, investigations, or actions now pending or, to the knowledge of Seller, threatened against either Group Entity, in each case in respect to Taxes. There are no liens for Taxes on the assets of either Group Entity except for Permitted Liens.
- (e) Each Group Entity has duly and timely withheld all amounts required by applicable Law to be withheld by it on account of Taxes (including Taxes and other amounts required to be withheld by it in respect of any amount paid or credited by it to or for the account or benefit of any Person, including any of its past and present shareholders, directors, officers, Employees and agents and any Person who is a non-resident in Canada for purposes of the Tax Act) and have duly remitted to the appropriate Governmental Authority within the time prescribed under any applicable Law all such amounts and other amounts required to be remitted by it. Without limiting the generality of the foregoing, each Group Entity has remitted all Canada Pension Plan contributions, provincial pension plan contributions, employment insurance premiums, employer health taxes and other Taxes payable by it in

respect of its Employees to the proper Governmental Authority within the time required under applicable Law.

- (f) Each Group Entity has collected from its past and present customers (or other Persons paying amounts to either Group Entity) the amount of all Taxes required to be collected and has paid and remitted such Taxes when due, in the form required under applicable Laws. Without limiting the generality of the foregoing, each Group Entity has charged, collected and remitted on a timely basis all Taxes as required under applicable Law on any sale, supply or delivery whatsoever, made by it.
- (g) Neither Group Entity has received an amount, and no amount has been reflected in Estimated Closing Date Working Capital or Estimated Closing Indebtedness, for a tax credit, refund, rebate, overpayment or similar adjustment of Taxes to which it is not entitled, and each Group Entity has retained all documentation prescribed by applicable Laws and in accordance with applicable Laws to support any claims for such amounts.
- (h) Each Group Entity is a registrant for purposes of any Taxes imposed under Part IX of the ETA, and its registration number is as set out opposite such Group Entity's name on such Schedule 4.31(h). Each Group Entity has complied with all registration, reporting, payment, collection and remittance requirements in respect of GST/HST, provincial sales tax or harmonized tax legislation and any other sales and use Taxes. A complete list of all elections currently in effect made by each of the Group Entities under the ETA is set forth in Schedule 4.31(h) of the Seller Disclosure Letter.
- (i) Neither Group Entity is a party to, bound by, or has any obligation under, any Tax allocation or sharing agreement or similar contract or arrangement or any agreement that obligates it to make any payment computed by reference to the Taxes, taxable income or taxable losses of any other Person. Neither Group Entity has acquired property in circumstances which could be subject to a liability under section 160 of the Tax Act (including having regard to Tax proposals announced by the Minister of Finance (Canada) on August 12, 2024). Neither Group Entity has acquired property from a Person not dealing at arm's length (for purposes of the Tax Act) with it for an amount in excess of the fair market value (for purposes of the Tax Act) at the time of its acquisition. Neither Group Entity has entered into any agreement with, or provided any undertaking to, any Person pursuant to which it has assumed liability for the payment of Taxes owing by such Person.
- (j) Except as set forth in Schedule 4.31(j) of the Seller Disclosure Letter, each Group Entity has delivered to Buyer a true copy of all Tax Returns filed by it and all material correspondence with any Governmental Authority relating to Taxes, including all notices of assessment or reassessment, for any taxation periods that remain open for assessment or reassessment as of the date hereof.
- (k) Neither Group Entity has at any time been engaged (nor has it been treated as having been engaged due to its status as a partner in a partnership or member of a limited liability company) in a trade or business in any country other than the country in which it is formed or organized, or is otherwise required to file an income Tax Return in any jurisdiction outside of such country. No claim has ever been made by a Governmental Authority in a jurisdiction where a Group Entity does not file Tax Returns that it is or may be subject to the imposition of any Tax by, or required to file Tax Returns in, that jurisdiction.

- (l) Neither Group Entity is required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Tax Period as a result of any (i) change in accounting method for any Pre-Closing Tax Period, (ii) installment sale made on or prior to the Closing Date, (iii) prepaid amount received on or prior to the Closing Date, or is otherwise required to include any item of income in, or exclude any item of deduction from, taxable income for any Post-Closing Tax Period attributable to income that accrued, or that was required to be reported for financial accounting purposes, in a prior taxable or fiscal period but that was not included in taxable income for that or another prior taxable or fiscal period, or (iv) use of an improper method of accounting for a taxable period ending on or prior to the Closing Date. Neither Group Entity has claimed any reserves (other than an allowance for doubtful accounts or unearned revenue that is reflected as a reduction in Working Capital in Closing Date Working Capital) for purposes of the Tax Act (or any other applicable Law) for the most recent Tax or fiscal period ended prior to the date of this Agreement or for any Tax period ending as a result of the completion of the Transaction other than in accordance with standard business practices consistently applied by it in all Pre-Closing Tax Periods.
- (m) There are no circumstances which exist and could result in, or have existed and resulted in, the application of any of sections 17, 79, 79.1 or 80 to 80.04, inclusive, of the Tax Act (or any similar provision under any applicable Law) to either Group Entity, and, for greater certainty, the cost amount to each Group Entity of each debt obligation owed to it (taking into account the assumptions in paragraphs 80.01(4)(a) and (b) and subparagraphs 80.01(4)(c)(i) and (ii)) is equal to the principal amount of such debt obligation plus any accrued and unpaid interest.
- (n) Neither Group Entity has incurred any deductible outlay or expense owing to a Person not dealing at arm's length for purposes of the Tax Act with it the amount of which would, assuming there is no agreement filed under paragraph 78(1)(b) of the Tax Act, be included in its income for Canadian income tax purposes for any taxation year or fiscal period beginning on or after the Closing Date under paragraph 78(1)(a) of the Tax Act.
- (o) Except as set forth in Schedule 4.31(o) of the Seller Disclosure Letter, no Person or group of Persons has ever acquired, or had the right to acquire, control of either Group Entity for purposes of the Tax Act and there has been no "loss restriction event", as defined in the Tax Act, in respect of either Group Entity (or any similar provision under any applicable Law), other than Buyer in accordance with this Agreement.
- (p) Each Group Entity has complied with subsection 89(14) of the Tax Act in respect of any dividend designated by it as an eligible dividend for the purposes of the Tax Act at the time of designation and payment of such a dividend, and neither Group Entity has any liability for any Taxes under Section 185.1 of the Tax Act.
- (q) Neither Group Entity has elected to treat a dividend as a "capital dividend" in circumstances where the full amount of such dividend is not deemed to be a capital dividend under 83(2) of the Tax Act and neither Group Entity is subject to any tax under Part III of the Tax Act.
- (r) Neither Group Entity has undertaken (i) any "reportable transaction" as defined in subsection 237.3(1) of the Tax Act or (ii) any "notifiable transaction" as defined in subsection 437.4(1) of the Tax Act.

- (s) Neither Group Entity has filed any returns related to a “reportable transaction”, “notifiable transaction”, or a “reportable uncertain tax treatment” as defined in sections 237.3, 237.4, and 237.5 of the Tax Act or any similar Canadian federal or provincial Tax Laws.
- (t) Each of the Group Entities has kept and keeps its books and records in compliance with section 230 of the Tax Act and all similar provisions of any law in respect of Taxes and each of the Group Entities has in its possession or under its control all books and records in respect of Taxes that are required to be maintained and preserved under all Laws.

4.32 Competition Act.

The aggregate value of the assets in Canada that are owned by the Group Entities, including entities controlled by the Group Entities, and the gross revenues from sales in, from or into Canada generated from all the assets proposed to be acquired, all as determined in accordance with Part IX of the *Competition Act* (Canada) and the Notifiable Transactions Regulations thereunder, do not exceed \$93 million.

4.33 Privacy and Data Security.

- (a) The Group Entities are in material compliance with, and have materially complied at all times with all Data Security Requirements.
- (b) To the knowledge of the Seller, all Personal Information in the custody or under the control of the Group Entities has been collected, used or disclosed (i) with the consent of each individual to which such Personal Information relates, where such consent is required under Data Security Requirements, or (ii) as otherwise permitted or required pursuant to Data Security Requirements.
- (c) Since January 1, 2022, to the knowledge of the Seller, the Group Entities have (i) undertaken appropriate due diligence in line with industry standards and practices on any third parties that process or have access to Personal Information on behalf of the Group Entities and (ii) an agreement in place with each such third party that processes or has access to Personal Information, to ensure compliance in all material respects with Data Security Requirements.
- (d) The Group Entities have not received, nor to the knowledge of Seller do they have reason to believe that they will receive, any subpoena, demand, or other written notice from any Governmental Authority investigating, inquiring into, or otherwise relating to any actual or potential violation of any Data Security Requirement or any Data Security Incident, nor are the Group Entities otherwise aware that they are under investigation by any Governmental Authority for any actual or potential violation of any Data Security Requirement or relating to any Data Security Incident. No notice, complaint, claim, enforcement action, or litigation of any kind has been threatened in writing, served on, initiated or otherwise asserted, against the Group Entities relating to any actual or potential violation of any Data Security Requirements or any Data Security Incident, or under any applicable industry standards.
- (e) To the knowledge of the Seller, the Group Entities have taken commercially reasonable steps consistent with Data Security Requirements to protect the integrity and security of the Computer Systems and to ensure that Personal Information under the Group Entities’ control is protected against Data Security Incidents. The Group Entities have established and have complied at all times, in all material respects, with a written information security

program (the “**Information Security Program**”) that materially complies with all Data Security Requirements, that is consistent with industry practice and (i) includes policies and procedures regarding Personal Information, and the Processing thereof, (ii) includes administrative, technical and physical safeguards, controls and measures that are designed to protect the security and integrity of data, including Personal Information, trade-secrets, proprietary information and confidential information, owned, controlled, maintained, held, or Processed by the Group Entities or any third party operating at the direction of the Group Entities, (iii) includes disaster recovery, business continuity, incident response, and security plans, procedures and facilities, and (iv) is designed to detect and protect against Data Security Incidents. The Group Entities have conducted security assessments and tests of the Computer Systems on no less than an annual basis, including engaging independent third parties to test Computer Systems for vulnerabilities, Data Security Incidents, and cyber threats.

- (f) To the knowledge of Seller (i) there have been no Data Security Incidents related to Personal Information in the custody and control of the Group Entities, including any system failures, breakdowns, or viruses; (ii) no breach or violation of any Group Entity’s Computer Systems or Information Security Program has occurred or is threatened in writing, and there has been no unauthorized or illegal use of or access to any Personal Information; (iii) the Group Entities have not been adversely affected by any denial-of-service or other attack designed to materially interrupt operations or to interrupt access to Computer Systems; and (iv) the Group Entities have not notified nor have they been required to notify any Person of any Data Security Incidents or other adverse events or incidents related to Personal Information.
- (g) The Group Entities have responded to all data subject requests, including any requests for access to Personal Information, the cessation of specified Processing activities or the rectification of any Personal Information, in each case in accordance with the requirements of Data Security Requirements.

4.34 No Brokers.

No broker, finder or investment banker or other person is directly or indirectly entitled to receive from any Group Entity any brokerage, finder’s or other contingent fee or commission or any similar charge in connection with the Transaction.

4.35 Prudential Support.

The Group Entities have been provided and maintain in good standing all Prudential Support required pursuant to the Market Rules. Descriptions of all Prudential Support arrangements in place are described in Schedule 4.35 of the Seller Disclosure Letter.

4.36 Water Heater Rental Contracts.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows on the date hereof and on the Closing Date and acknowledges and confirms that Seller is relying upon such representations and warranties in connection with the entering into of this Agreement and the consummation of the Transaction:

5.1 Formation and Power.

Buyer is incorporated and existing under the Laws of its jurisdiction of incorporation and has the corporate power and authority to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is a party.

5.2 No Conflict.

The execution, delivery and performance by it of this Agreement and any Ancillary Agreement to which Buyer is a Party and the completion of the transactions contemplated herein:

- (a) have been authorized by all necessary corporate action or actions required under its Governing Documents;
- (b) do not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in a breach or a violation of, or conflict with, or allow any other Person to exercise any rights under, any terms or provisions of (i) its Governing Documents, or (ii) any material Contract to which Buyer is a party; and
- (c) do not and will not (or would not with the giving of notice, the lapse of time, or both, or the happening of any other event or condition) result in the violation of any applicable Law or Order.

5.3 Required Authorizations.

Other than the Required Regulatory Approvals no filing with, notice to, consent, approval or Authorization of, any Governmental Authority is required by it as a condition to the lawful completion of the Transaction.

5.4 Required Consents.

There is no requirement to obtain any consent, approval, authorization or waiver of a party, or to provide a notice to any party, under any Contract to which Buyer is a party in connection with the execution and delivery of this Agreement and the Ancillary Agreements or the completion of the Transaction.

5.5 Execution and Binding Obligation.

This Agreement has been, and each Ancillary Agreement to which it is a party will be, duly executed and delivered by Buyer, and constitutes a legal, valid and binding obligation of it, enforceable against it in accordance with its terms subject only to the Enforcement Limitation.

5.6 Litigation.

There are no Proceedings in progress, pending, or to the knowledge of Buyer, threatened against it, which prohibit, restrict or seek to enjoin the Transaction. Buyer is not subject to any outstanding Order which would in any manner affect, prohibit, restrain or make illegal the Transaction.

5.7 No Brokers.

No broker, finder or investment banker or other person engaged by it is directly or indirectly entitled to any brokerage, finder's or other contingent fee or commission or any similar charge in connection with the Transaction.

5.8 Investigation; No Additional Representations; No Reliance, etc.

Buyer acknowledges and agrees that neither the Seller nor any of the Group Entities have made nor shall they be deemed to have made (and Buyer hereby disclaims reliance on) any representation or warranty, express or implied, with respect to Seller, any of the Group Entities or the Transaction, other than those explicitly and expressly set forth in this Agreement and the Ancillary Agreements. Without limiting the generality of the foregoing, Buyer acknowledges and agrees that neither the Seller nor any Group Entity makes any representation or warranty with respect to (a) any projections, estimates or budgets delivered to or made available to Buyer of future revenues, future results of operations, future cash flows or future financial conditions of any Group Entity or the future business and operations of the Group Entities, except those explicitly set forth in this Agreement (as qualified by the Seller Disclosure Letter) and the Ancillary Agreements, or (b) any other information or documents made available to Buyer or its counsel, accountants or advisors with respect to the Group Entities, except those explicitly set forth in this Agreement (as qualified by the Seller Disclosure Letter) and the Ancillary Agreements. Buyer acknowledges and agrees that it has made its own inquiry and investigation into, and based thereon has formed an independent judgment concerning, each of the Group Entities. Notwithstanding anything to the contrary set forth herein, the foregoing statements in this Section 5.8 assume the absence of fraud, willful misconduct, gross negligence or criminal activity on the part of any of the Seller, Group Entities or their respective directors, managers, officers, employees, shareholders, representatives or advisors, and Buyer is relying upon such absence of fraud, willful misconduct, gross negligence or criminal activity and nothing set forth in this

Section 5.8 shall in any way limit any claim that Buyer may have with respect to fraud willful misconduct, gross negligence or criminal activity.

ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES

6.1 Conduct of Business Prior to Closing.

- (a) Except: (i) as expressly required and contemplated by this Agreement, or (ii) with the prior written consent of Buyer, during the Interim Period, Seller shall cause each Group Entity to (A) conduct the Business in the Ordinary Course in compliance with all applicable Laws, (B) not take or omit to take any action within its control which action or omission would reasonably be expected to result in a Material Adverse Effect, (C) use commercially reasonable efforts to (x) preserve substantially intact its business organization and (y) preserve in all material respects the present commercial relationships with key Persons with whom it has material business dealings (including its commercial, employment and regulatory relationships) and (D) without limiting the generality of the foregoing:
 - (i) maintain in effect all of its material Authorizations;
 - (ii) maintain all of its properties in a manner consistent with past practice, reasonable wear and tear excepted, and maintain the types and levels of insurance currently in effect in respect of its assets, including the Owned Real Properties, in each case, in all material respects;
 - (iii) not to take any action or omit to take any action within its control, as a result of which any of the representations and warranties in Section 4.10 (Conduct of Business) would become untrue in any material respect;
 - (iv) duly and on a timely basis file all Tax Returns required to be filed by it on or after the date hereof which Tax Returns will be true, complete and correct in all material respects;
 - (v) timely pay in full all Taxes shown on such Tax Returns or on subsequent assessments with respect thereto; and
 - (vi) cause the Group Entities to meet the Prudential Support requirements required pursuant to the Market Rules.
- (b) Except (i) as set out on Schedule 6.1(b) to the Seller Disclosure Letter, (ii) as expressly required and contemplated by this Agreement, or (iii) with the prior consent of Buyer, during the Interim Period, Seller shall cause each Group Entity not to:



1	1	1
2	2	2
3	3	3
4	4	4
5	5	5
6	6	6
7	7	7
8	8	8
9	9	9
10	10	10
11	11	11
12	12	12
13	13	13
14	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20
21	21	21
22	22	22
23	23	23
24	24	24
25	25	25
26	26	26
27	27	27
28	28	28
29	29	29
30	30	30
31	31	31
32	32	32
33	33	33
34	34	34
35	35	35
36	36	36
37	37	37
38	38	38
39	39	39
40	40	40
41	41	41
42	42	42
43	43	43
44	44	44
45	45	45
46	46	46
47	47	47
48	48	48
49	49	49
50	50	50
51	51	51
52	52	52
53	53	53
54	54	54
55	55	55
56	56	56
57	57	57
58	58	58
59	59	59
60	60	60
61	61	61
62	62	62
63	63	63
64	64	64
65	65	65
66	66	66
67	67	67
68	68	68
69	69	69
70	70	70
71	71	71
72	72	72
73	73	73
74	74	74
75	75	75
76	76	76
77	77	77
78	78	78
79	79	79
80	80	80
81	81	81
82	82	82
83	83	83
84	84	84
85	85	85
86	86	86
87	87	87
88	88	88
89	89	89
90	90	90
91	91	91
92	92	92
93	93	93
94	94	94
95	95	95
96	96	96
97	97	97
98	98	98
99	99	99
100	100	100

[illegible]



6.2 Access

- (a) During the Interim Period and (i) following the expiration of the Due Diligence Period and (ii) either (A) prior to the Buyer and ELK entering into the Management Contract or (B) following any expiration or termination of the Management Contract, Seller shall cause the Group Entities to afford to Buyer and its Representatives during normal business hours reasonable access (without undue interference to the conduct of the Business) to their affairs and properties, including its Books and Records, Contracts, personnel, accountants and other Representatives and the Owned Real Property and the Easement Lands for the purposes of ensuring Seller's compliance with the terms of this Agreement, confirming the satisfaction of the conditions set out in this Agreement (including those in Article 8) and to permit Buyer to undertake necessary planning for intended integration activities to be implemented by the Buyer after Closing. All requests by Buyer or its Representatives for such access shall be made upon reasonable written notice in advance of such access. Buyer may not conduct any invasive environmental testing or assessments without the prior written consent of Seller provided that Seller shall not unreasonably withhold or delay such consent.
- (b) Without limiting Section 6.2(a), during the Due Diligence Period, Seller shall cause the Group Entities to afford to Buyer and its Representatives during normal business hours reasonable access (without undue interference to the conduct of the Business) to their affairs and properties, including its Books and Records, Contracts, personnel, accountants and other Representatives and the Owned Real Property and the Easement Lands to permit Buyer to complete its due diligence. All requests by Buyer or its Representatives for such access shall be made upon reasonable written notice in advance of such access. Buyer may not conduct any invasive environmental testing or assessments without the prior written consent of Seller provided that Seller shall not unreasonably withhold or delay such consent. Seller shall, and shall cause the Group Entities to, provide prompt, full and true responses to all diligence questions submitted by Buyer prior to and during the Due Diligence Period (and Seller shall commit sufficient resources to ensure compliance with the foregoing).

6.3 Notice of Developments.

- (a) Seller shall promptly notify Buyer in writing of any:
 - (i) material development affecting the assets, Liabilities, Business, condition (financial or otherwise), operations or prospects of the Group Entities;
 - (ii) fact circumstance, event or action, the existence, occurrence or taking of which (A) has had or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct in any material respect, or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 8.1 to be satisfied;

- (iii) notice or other communication from any Person in connection with or related to the Transaction; and
 - (iv) Proceedings commenced or threatened in writing against, relating to or involving or otherwise affecting Seller or any Group Entity that, if pending on the date of this Agreement, would have been required to have been disclosed under Section 4.13 or that relates to the consummation of the Transaction.
- (b) Buyer's receipt of any information under this Section 6.3 will not (i) operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller or (ii) be deemed to prevent or cure any such breach of, or inaccuracy in, amend or supplement any Section of the Seller Disclosure Letter, or otherwise disclose any exception to, any of the representations and warranties set forth in this Agreement.

6.4 Confidentiality.

Buyer acknowledges and agrees that the terms of Section 21 of the Confirmation of Letter of Intent dated December 6, 2024 (the “**Confidentiality Provisions**”) between EWU and Seller are hereby incorporated herein by reference and shall continue in full force and effect notwithstanding any announcement of this Agreement until the Closing, at which time such Confidentiality Provisions and the obligations of each of the parties under the Confidentiality Provisions shall terminate. If this Agreement is, for any reason, terminated prior to Closing, the Confidentiality Provisions shall continue in full force and effect in accordance with its terms. Notwithstanding the foregoing, Seller hereby consents to the disclosure by Buyer to its lenders and debenture holders (including the debenture trustee) of the existence and terms of the Transactions and this Agreement, and of all other information reasonably requested thereby in connection with any consent or notice requirements related to the Transactions.

6.5 Satisfaction of Conditions.

Subject to this Article 6:

- (a) Buyer shall use all its commercially reasonable efforts to satisfy, or cause the satisfaction of, the conditions set out in Section 8.2 that are for the benefit of Seller; and
- (b) Seller shall use all its commercially reasonable efforts to satisfy, or cause the satisfaction of, the conditions set out in Section 8.1 that are for the benefit of Buyer.

[REDACTED]

[REDACTED]

■ **RESEARCH** *Journal of the American Academy of Child and Adolescent Psychiatry* 2006;45:103-111.

6.7 Regulatory and Other Required Consents.

- (a) Subject to Article 6, including this Section 6.7, the Parties shall use commercially reasonable efforts to cooperate in good faith with each other and their respective advisors and Representatives in connection with any steps or consents required to be taken or obtained as part of their respective obligations under this Agreement or otherwise required to consummate the Transaction.
- (b) Seller shall, and shall cause the Group Entities to use all commercially reasonable efforts to obtain and deliver all Consents required by Seller and the Group Entities on terms and conditions acceptable to Buyer and Seller, each acting reasonably. All costs and expenses incurred in connection with seeking, obtaining and delivering all such Consents shall be borne by Seller.
- (c) Promptly following the execution of this Agreement, the Parties shall proceed to prepare and file with the appropriate Governmental Authorities such Consents from or to Governmental Authorities that are necessary in order to consummate the Transactions, including in respect of the Required Regulatory Approvals other than the OEB Approval, and shall diligently and expeditiously prosecute, and shall cooperate fully with each other in the prosecution of, such matters. Promptly following the execution of this Agreement, Buyer shall proceed to prepare and file with the Ontario Energy Board an application for OEB Approval, and Seller shall fully, diligently and expeditiously cooperate with Buyer (including to provide Buyer with all information necessary for the OEB Approval application in respect of the Seller and the Group Entities required therefor, and with all other information in the possession of or otherwise attainable by Seller required therefor) in the prosecution of the OEB Approval.
- (d) Each Party shall provide the other Parties (or its external counsel in respect of competitively-sensitive, privileged or confidential matters) with reasonable opportunity to review and comment on any applications, filings and submissions made with the appropriate Governmental Authorities and each of the other Parties shall use its commercially reasonable efforts to cooperate with and assist such Party in the preparation and making of all such applications, filings and submissions and the obtaining or making of all Consents from or to Governmental Authorities required to be obtained or made by such Party (including participating and appearing in any proceedings before any agency, court or tribunal).
- (e) Notwithstanding anything to contrary contained herein, Buyer shall not be required to (i) sell, transfer or otherwise dispose of, or hold separate and agree to sell, transfer or otherwise dispose of, assets, categories of assets or businesses of the Group Entities, the Business, Buyer or its Affiliates; (ii) terminate any existing relationships and contractual rights and obligations of the Group Entities, the Business, Buyer or its Affiliates; (iii) terminate any relevant venture or other arrangement of the Group Entities, the Business, Buyer or its Affiliates; or (iv) effectuate any other change or restructuring of the Group Entities, the Business, Buyer or its Affiliates (or, in each case, to enter into agreements or stipulate to the entry of an order or decree with any Governmental Authority).
- (f) Seller and Buyer will cooperate in connection with any investigation or litigation by, or negotiations with, any Governmental Authority or other Person relating to the Transaction or regulatory filings in respect of the Required Regulatory Approvals. Without limiting the

foregoing and subject to applicable legal limitations and the instructions of any Governmental Authority, Seller and Buyer agree to:

- (i) cooperate and consult with each other;
 - (ii) file, and cause their respective Affiliates to file, as soon as practicable, any additional information reasonably requested by any Governmental Authority;
 - (iii) keep each other reasonably apprised of the status of matters relating to the completion of the Transaction, including promptly furnishing the other with copies of notices or other communications received by such Party from, or given by such Party to, any third party or any Governmental Authority with respect to the Transaction;
 - (iv) use its commercially reasonable efforts to respond to any inquiries or requests received from a Governmental Authority at the earliest practicable date;
 - (v) not participate in any meeting or discussion, either in person or by telephone, with any Governmental Authority in connection with this Agreement or the Transaction unless, to the extent not prohibited by such Governmental Authority, it gives the other the opportunity to attend and observe.
- (g) Buyer shall pay its own costs related to the OEB Approval and shall reimburse Seller and the Group Entities for all reasonable, out-of-pocket and documented third-party expenses arising directly from Buyer's express written request of Seller or any Group Entity to provide information for, to complete any portion of the application in respect of, or to provide other similar assistance in respect of, the prosecution of the OEB Approval. Upon incurring any such expenses, Seller shall, or shall cause the applicable Group Entity to, provide Buyer the applicable invoice along with receipts and other supporting documentation reasonably requested by Buyer. Notwithstanding the foregoing, Seller acknowledges and agrees that any additional costs incurred by Seller or the Group Entities in respect of the prosecution of the OEB Approval shall be for the account of the Seller or the applicable Group Entity and shall not be subject to reimbursement by Buyer.

6.8 Exclusivity.

Seller shall not, and Seller shall cause the Group Entities and each of their respective shareholders, partners, officers, directors, agents, other Representatives or Affiliates not to: (a) directly or indirectly solicit, initiate, continue or enter into discussions or transactions with, or encourage, or provide any information to, any Person (other than Buyer or its Affiliates and their respective Representatives) concerning any direct or indirect issue or sale of any debt or equity securities of Seller, any Group Entity, or the assets of any Group Entity, any amalgamation, merger, any public or private offering of securities, or any similar transaction directly or indirectly involving Seller or any Group Entity (a "**Competing Transaction**"); or (b) participate in any discussions or negotiations regarding, furnish any information with respect to, assist or participate in, or facilitate in any other manner any effort or attempt by any Person (other than Buyer or its Affiliates) to do or seek a Competing Transaction. Seller and the Group Entities shall promptly notify Buyer of any inquiry made of Seller or any Group Entity from any Person regarding a Competing Transaction. Immediately after the execution of this Agreement, Seller and the Group Entities, as applicable, shall cease and cause to be terminated by any Person acting on its behalf, any existing discussions with any Person other than Buyer and its Affiliates and Representatives that relate to any Competing Transaction by indicating that such Person is subject to an exclusivity agreement and is unable

to provide any information related to the Group Entities, or entertain any proposal or offers to engage in any negotiations or discussions concerning a Competing Transaction until the earlier of the Closing Date or the termination of this Agreement pursuant to Article 8.

6.9 Termination of Related Party Transactions.



6.10 Liens.

If, at any time prior to the Closing, there are any Liens (other than Permitted Liens) on, against or in respect of any of the assets or properties of any of the Group Entities (including the Owned Real Property and the Easement Lands) or any Liens on, against or in respect of the Purchased Shares, Seller shall cause such Liens to be released, validly discharged, waived or otherwise dealt with to the satisfaction of Buyer, acting reasonably, at or prior to the Closing. The Seller shall cause all Permitted Liens listed on Schedule 1.1(a) of the Seller Disclosure Letter denoted with an asterisk (*) to be released, validly discharged, waived or otherwise dealt with to the satisfaction of Buyer, acting reasonably, at or prior to the Closing.

6.11 Corporate Action.

At or prior to the Closing, Seller shall take, and shall cause the Group Entities to take, all necessary corporate action for the purposes of approving the transfer of the Purchased Shares to Buyer at the Closing.

6.12 Interim Financial Statements.

During the Interim Period, Seller shall deliver to Buyer the quarterly unaudited non-consolidated financial statements of the Group Entities, consisting of a consolidated balance sheet and the accompanying consolidated statements of income and expenses as soon as reasonably practicable, and in any case within sixty (60) days, following the completion of each quarter-end which occurs during the Interim Period.

6.13 By-Laws and Ordinances.

- (a) On or before April 30, 2025, Seller shall pass a by-law to authorize and ratify this Agreement and the Transactions. Such by-law shall expressly reference the ratification of this Agreement and the Transactions.
- (b) Seller shall not (i) other than the passing of the by-law contemplated by Section 6.13(a), pass, approve, adopt or permit the adoption of, or amend, modify, terminate, cancel, revoke or suspend any existing by-laws or ordinances that could affect, or be reasonably expected to affect, Seller's ability to consummate the Transactions or (ii) amend, modify, terminate, cancel, revoke or suspend any town council, other resolutions or by-laws related to the Transactions.

6.14 Cooperation.

Prior to the Closing, Seller shall, and shall cause the Group Entities to, complete any rectifications to the Books and Records as may be reasonably requested by Buyer.

6.15 Collective Agreements.

■ [REDACTED]

■ [REDACTED]

ARTICLE 7 CLOSING

7.1 Closing.

The Closing shall take place by way of virtual closing hosted by Torys LLP at 9:00 a.m. (Toronto time) on the Closing Date, or at such other time on the Closing Date or such other place as may be agreed in writing by the Parties.

7.2 Closing Deliveries by Seller and the Group Entities.

At or prior to Closing, Seller shall, and shall cause the Group Entities to, as applicable, deliver, or cause to be delivered to Buyer (or as Buyer may direct) the following, duly executed by Seller, the Group Entities or such other Persons party thereto, as and where applicable, substantially in the forms of the Exhibits hereto, where applicable, and otherwise in form and content satisfactory to Buyer, acting reasonably:

- (a) certificates representing the Purchased Shares duly endorsed in blank for transfer by Seller or accompanied by irrevocable stock transfer powers duly executed by Seller, together with evidence that Buyer has been entered upon the books of (i) ELK as the holder of the ELK Purchased Shares and (ii) ESI as the holder of the ESI Purchased Shares, and such other evidence as Buyer may reasonably request to the effect that, immediately following the Closing, Buyer is the sole registered and beneficial owner of all of the Purchased Shares;
- (b) the Books and Records of each Group Entity;
- (c) evidence reasonably satisfactory to Buyer of the release and valid discharge of (i) all Liens (other than Permitted Liens) on, against or in respect of any of the assets or properties of any of the Group Entities (including the Owned Real Property and the Easement Lands) and (ii) all Liens on, against or in respect of the Purchased Shares;
- (d) certified copies of: (i) the Governing Documents of Seller and each Group Entity; (ii) a town council resolution of Seller and the resolutions of the board of directors of each Group Entity in each case approving the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Seller or such Group Entity is a party; (iii) the resolutions of the board of directors of ELK authorizing the transfer of the ELK Purchased

Shares to Buyer; (iv) the resolutions of the board of directors of ESI authorizing the transfer of the ESI Purchased Shares to Buyer; and (v) incumbency certificate setting out the names and signatures of the officers and directors of Seller and each Group Entity authorized to sign this Agreement and the Ancillary Agreements;

- (e) a certificate of status, compliance, good standing or like certificate with respect to Seller and each Group Entity issued by appropriate government officials of their respective jurisdictions of formation dated within one Business Day of the Closing Date;
- (f) the Payout Letters;
- (g) the Seller Closing Certificate;
- (h) the Contribution Agreement;
- (i) the Local Community Commitment Agreement;
- (j) the Governance Representation Agreement;
- (k) Shareholder Releases;
- (l) the Director and Officer Releases;
- (m) the Escrow Agreement;
- (n) evidence reasonably satisfactory to Buyer that all Consents set forth on Schedule 8.1(f) of the Seller Disclosure Letter have been obtained in accordance with Section 8.1(f);
- (o) evidence satisfactory to Buyer of the termination of Related Party Transactions in accordance with Section 6.9;
- (p) evidence satisfactory to Buyer of the termination of all shareholders' agreements, shareholder declarations and similar agreements of each Group Entity; and
- (q) without limitation to the foregoing, all other documents or instruments as Buyer has reasonably requested and are reasonably necessary to consummate the Transaction.

7.3 Closing Deliveries by Buyer.

At or prior to Closing, Buyer shall deliver or cause to be delivered to Seller the following, duly executed by Buyer, substantially in the forms of the Exhibits hereto, where applicable, and otherwise in form and content satisfactory to Seller, acting reasonably:

- (a) the Estimated Purchase Price delivered in the manner set forth in Section 2.4;
- (b) certified copies of: (i) the Governing Documents of Buyer; (ii) the resolutions of the board of directors of each of Buyer approving the execution, delivery and performance of this Agreement and the Ancillary Agreements to which Buyer is a party; and (iii) incumbency certificate setting out the names and signatures of the officers and directors of Buyer authorized to sign this Agreement and the Ancillary Agreements;

- (c) a certificate of status, compliance, good standing or like certificate with respect to Buyer issued by appropriate government officials of its jurisdiction of formation dated within one Business Day of the Closing Date;
- (d) the Buyer Closing Certificate;
- (e) the Contribution Agreement;
- (f) the Local Community Commitment Agreement;
- (g) the Governance Representation Agreement;
- (h) Shareholder Releases;
- (i) the Escrow Agreement; and
- (j) without limitation to the foregoing, all other documents or instruments as Seller has reasonably requested and are reasonably necessary to consummate the Transaction.

ARTICLE 8 CONDITIONS OF CLOSING; TERMINATION

8.1 Conditions for the Benefit of Buyer.

The obligation of Buyer to complete the purchase of the Purchased Shares is subject to the following conditions to be satisfied or performed prior to the Closing, which conditions are for the exclusive benefit of Buyer and may be waived, in whole or in part, by Buyer in its sole discretion:

- (a) **Accuracy of Representations and Warranties; Performance of Covenants.** Each of:
 - (i) the representations and warranties of Seller shall be true and accurate in all respects on the date hereof and on the Closing Date; and
 - (ii) the covenants and obligations contained in this Agreement to be performed by Seller on or before the Closing Date shall have been performed in all material respects.
- (b) **No Material Adverse Effect.** There shall not have occurred a Material Adverse Effect.
- (c) **Seller Closing Certificate.** Seller shall have delivered to Buyer at the Closing a certificate, substantially in the form attached as Exhibit “F”, of an officer or other authorized Representative of Seller dated as of the Closing Date, as to the matters set forth in Section 8.1(a) and Section 8.1(b) (the “**Seller Closing Certificate**”).
- (d) **Closing Deliverables.** Each of the closing deliverables set out in Section 7.2 shall have been executed and delivered to Buyer.
- (e) **Termination of Related Party Transactions.** The Related Party Transactions (other than Contracts solely between two Group Entities) shall have been terminated, and all Liabilities thereunder shall have been satisfied in full, in each case on terms acceptable to Buyer acting reasonably, and Seller shall have provided reasonable evidence thereof to Buyer.

- (f) **Required Consents.** Each of the Consents set forth on Schedule 8.1(f) of the Seller Disclosure Letter, and the consent of Buyer's debenture trustee, shall have been received and shall be in full force and effect on terms acceptable to Buyer, acting reasonably.
- (g) **Required Regulatory Approvals.** The Required Regulatory Approvals shall have been obtained on terms acceptable to Buyer, acting reasonably, and shall be in full force and effect.
- (h) **No Law or Order.** No enforceable Law, Order or claim enjoining, restricting or prohibiting any of the Transaction shall have been rendered, instituted or be pending.
- (i) **No Proceeding.** No Proceeding shall be pending or, to the knowledge of Seller threatened, by any Person to restrain or prohibit:
 - (i) the completion of the Transactions; or
 - (ii) the Group Entities from carrying on the Business as the Business is being carried on in all material respects at the date hereof.
- (j) **Discharge of Liens.** Buyer shall have received evidence reasonably satisfactory to it of the release and valid discharge of:
 - (i) all Liens on, against or in respect of the securities, assets or properties (including the Owned Real Property and the Easement Lands) of each Group Entity, other than Permitted Liens;
 - (ii) all Liens on, against or in respect of the Purchased Shares; and
 - (iii) all Permitted Liens listed on Schedule 1.1(a) of the Seller Disclosure Letter denoted with an asterisk (*).
- (k) **Termination of Management Contract.** To the extent entered into, the Management Contract shall have been terminated, and all Liabilities thereunder shall have been satisfied in full, in each case on terms acceptable to Buyer acting reasonably, and Seller shall have provided reasonable evidence thereof to Buyer.
- (l) **Completion of Due Diligence.** The Buyer shall have completed its due diligence in respect of the Transaction prior to the expiration of the Due Diligence Period, the results of which are satisfactory to Buyer in its sole discretion.

■ [REDACTED]

■ [REDACTED]

8.2 Conditions for the Benefit of Seller.

The obligation of Seller to complete the sale of the Purchased Shares is subject to the following conditions to be satisfied or performed prior to the Closing, which conditions are for the exclusive benefit of Seller and may be waived, in whole or in part, by Seller, in its sole discretion:

- (a) **Accuracy of Representations and Warranties; Performance of Covenants.** Each of:
 - (i) the representations and warranties of Buyer made pursuant to this Agreement shall be true and correct in all material respects on the Closing Date;
 - (ii) the covenants and obligations contained in this Agreement to be performed by Buyer on or before the Closing Date shall have been performed in all material respects.
- (b) **Buyer Closing Certificate.** Buyer shall have delivered to Seller at the Closing a certificate, substantially in the form attached as Exhibit “G”, of an officer or other authorized Representative of Buyer dated as of the Closing Date, as to the matters set forth in Section 8.2(a) (the “**Buyer Closing Certificate**”).
- (c) **Closing Deliverables.** All closing deliverables set out in Section 7.3 shall have been executed and delivered.
- (d) **Required Regulatory Approvals.** The Required Regulatory Approvals shall have been obtained and shall be in full force and effect.
- (e) **No Law or Order.** No enforceable Law, Order or claim enjoining, restricting or prohibiting any of the Transaction shall have been rendered, instituted or be pending.
- (f) **No Proceeding.** No Proceeding (other than any Proceeding commenced by or at the direction of Buyer) shall be pending or threatened by any Person to restrain or prohibit:
 - (i) the purchase and sale of the Purchased Shares hereunder; or
 - (ii) the Group Entities from carrying on the Business as the Business is being carried on in all material respects at the date hereof.

8.3 Termination.

This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time before the Closing Date only:

- (a) by the written agreement of Buyer and Seller;
- (b) by Buyer by written notice to Seller if:
 - (i) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller under this Agreement, or if there has been an event, circumstance or change that, if left uncured, would give rise to a breach of Seller’s representations and warranties as of the Closing Date, that would give rise to the failure of any of the conditions specified in Article 8, and such breach, inaccuracy or failure has not been cured by Seller prior to the earlier

- of (A) sixty (60) days of Seller's receipt of written notice of such breach from Buyer or (B) the Termination Date; provided, however, that the right to terminate this Agreement pursuant to this Section 8.3(b)(i) will not be available to Buyer at any time there exists a breach of any representation, warranty or covenant of Buyer in this Agreement such that Seller would then be entitled to terminate this Agreement pursuant to Section 8.3(c)(i) (without giving effect to the proviso therein);
- (ii) the Due Diligence Period has not expired and Buyer determines in its sole discretion that Buyer is not satisfied with the results of its due diligence; or
 - (iii) the Closing has not been completed before the Termination Date, unless the Closing has not been completed due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it before the Closing Date;
- (c) by Seller by written notice to Buyer if:
- (i) there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer under this Agreement, or if there has been an event, circumstance or change that, if left uncured, would give rise to a breach of Buyer's representations and warranties as of the Closing Date, that would give rise to the failure of any of the conditions specified in Article 8, and such breach, inaccuracy or failure has not been cured by Buyer prior to the earlier of (A) sixty (60) days of Buyer's receipt of written notice of such breach from Seller or (B) the Termination Date; provided, however, that the right to terminate this Agreement pursuant to this Section 8.3(c)(i) will not be available to Seller at any time there exists a breach of any representation, warranty or covenant of any Seller in this Agreement such that Buyer would then be entitled to terminate this Agreement pursuant to Section 8.3(b)(i) (without giving effect to the proviso therein) or 8.3(b)(ii); or
 - (ii) the Closing has not been completed before the Termination Date, unless the Closing has not been completed due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it before the Closing Date; or
- (d) by either Buyer or Seller, upon written notification to the non-terminating Party by the terminating Party, if any permanent injunction, order, decree, ruling or other action of or by any Governmental Authority of competent jurisdiction (provided that where such Governmental Authority is Seller, only the Buyer may terminate this Agreement) that shall prohibit consummation of the transactions contemplated by this Agreement shall have been issued or taken and shall have become final and non-appealable.

8.4 Effect of Termination.

- (a) A Party's right of termination under this Article 8 is in addition to any other right it may have under this Agreement or otherwise, and the exercise of a right of termination will not be an election of remedies. If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice

to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

- (b) If this Agreement is validly terminated pursuant to and in accordance with this Article 8, this Agreement will forthwith become null and void, and have no further effect, and the Parties shall be released from all of their respective obligations under this Agreement, except that the Confidentiality Provisions and the provisions of Sections 6.4, 8.4, 11.3, 11.6 and 11.16 shall survive any termination of this Agreement.
- (c) If this Agreement is terminated by a Seller pursuant to Section 8.3(c)(i), Seller shall be entitled to retain the Deposit and such retention of the Deposit shall be Seller's sole and exclusive remedy in respect against Buyer and Buyer's Affiliates for any breach of this Agreement and Damages suffered or incurred as a result of the termination of this Agreement and the facts, events and circumstances giving rise thereto (and, for greater certainty, Buyer shall be relieved of liability for its breach and Seller shall have no right to pursue any other rights or remedies in respect of such breach, including its right to seek or obtain specific performance under Section 10.12, and Seller hereby expressly and irrevocably waives and disclaims all such rights and remedies to the fullest extent permitted by applicable Law).
- (d) If this Agreement is terminated other than pursuant to Section 8.3(c)(i), Seller shall, within five (5) Business Days of the termination of this Agreement, cause the Deposit (and all interest accrued thereon) to be returned to Buyer, and shall have no right to withhold all or any portion of the Deposit. If the Deposit (and all interest accrued thereon) is not returned to Buyer within five (5) Business Days, Seller shall pay an amount equal to the Deposit (and all interest accrued thereon) to Buyer.
- (e) If this Agreement is terminated by Buyer pursuant to Section 8.3(b)(i) or 8.3(b)(ii), Seller shall not be relieved of liability for its breach and Buyer's right to pursue all legal remedies in respect of such breach will survive such termination unimpaired.
- (f) If this Agreement is terminated by Buyer pursuant to Section 8.3(b)(i) for a breach by Seller of Section 6.13, then Seller shall pay to Buyer an amount equal to all out of pocket costs and expenses incurred by Buyer and its Affiliates in connection with the consideration, preparation, negotiation, execution, delivery and performance of the Transactions, this Agreement and the Ancillary Agreements. Buyer shall determine and notify Seller of the aggregate amount of such costs and expenses within a reasonable period of time following Buyer's termination of this Agreement. Seller shall pay such amount to Buyer within five (5) Business Days of Buyer's notification of such aggregate amount. Buyer and Seller agree that (i) this Section 8.4(f) is intended to represent a genuine pre-estimate of the minimum damages suffered or incurred by Buyer as a result of the termination of this Agreement in the circumstances set out in herein and is not a penalty, and (ii) Buyer would not have entered into this Agreement without the agreements in this Section 8.4(f). The Buyer shall also be entitled to bring a claim against Seller for all other damages suffered by Buyer in connection with the foregoing circumstances (and, for greater certainty, Buyer's rights under this Section 8.4(f) are in addition to Buyer's rights under Section 8.4(d)).
- (g) The Seller acknowledges and agrees that as of the date of this Agreement the Buyer continues to undertake diligence in respect of the Transactions and the Group Entities. In the event that Buyer terminates this Agreement pursuant to Section 8.3(b)(ii) prior to the

expiration of the Due Diligence Period, the Seller acknowledges and agrees that neither the Seller nor any of its Affiliates will have suffered or incurred any Damages as a result of the termination of this Agreement and the facts, events and circumstances giving rise thereto (and, for greater certainty, Buyer shall be relieved of liability and Seller shall have no right to pursue any other rights or remedies in respect of such termination, including its right to seek or obtain specific performance under Section 10.12, and Seller hereby expressly and irrevocably waives and disclaims all such rights and remedies to the fullest extent permitted by applicable Law).

8.5 Management Contract.

- (a) Buyer and Seller may enter into the Management Contract in form and substance satisfactory to each Party, acting reasonably, following the date of this Agreement. Each Party acknowledges and agrees that neither Party is obligated to enter into the Management Contract.
- (b) Seller acknowledges and agrees that the existence of the Management Contract and the Buyer or an Affiliate of a Buyer's performance under or in connection with the Management Contract does not in any way (a) amend, modify, limit, affect or vitiate the representations and warranties, covenants and other agreements of Seller under this Agreement or the Ancillary Agreements, (b) limit Buyer's ability and right to rely on such representations and warranties, covenants and other agreements or (c) constitute or deem any waiver of a condition in favour of Buyer under Section 8.1 or limit Buyer's ability and right to rely on any such condition.
- (c) In the event that during the Interim Period Buyer, in its capacity as manager under the Management Contract, becomes aware of a breach of representation, warranty or covenant of the Seller or the Group Entities under this Agreement, or of circumstances that may cause a Material Adverse Effect prior to the Closing Date, the Buyer agrees to provide the Seller with notice and details of such breach or circumstances to permit Seller an opportunity to remedy the same prior to Buyer delivering a notice of termination pursuant to Section 8.3(b)(i) (it being acknowledged that Seller has a period cure period provided for in Section 8.3(b)(i) and accordingly a notice of termination would not be delivered prior to such cure period expiring), where, solely in the circumstances described by this Section 8.5(c), for the purposes of the cure period in Section 8.3(b)(i) the words "sixty (60) days" shall be replaced with "ninety (90) days". This Section 8.5(c) shall not, and shall not be deemed to, impair, modify or restrict any of Buyer's rights under this Agreement or at Law.

ARTICLE 9 POST-CLOSING COVENANTS

9.1 Further Assurances.

Each Party, upon the request of the other, whether at or after the Closing, shall do, execute, acknowledge and deliver or cause to be done, executed, acknowledged or delivered all such further conveyances, transfers and other assurances as may be reasonably required to effectively transfer the Purchased Shares to Buyer and carry out the intent of this Agreement.

9.2 Tax Matters.

- (a) **Filing of Tax Returns for Interim Periods.** Seller shall cause the Group Entities to prepare and file all income Tax Returns for the Group Entities that are due after the Closing Date in respect of periods ending on or before the Closing Date (other than in respect of any Straddle Period), which Tax Returns must be prepared and filed on a timely basis consistent with each Group Entity's existing procedures for preparing Tax Returns and in a manner consistent with prior practice with respect to treatment of specific items on the Tax Returns, except to the extent different procedures or treatment is required by applicable Law. Seller shall provide Buyer with a draft of such Tax Returns fifteen (15) days prior to the due date for filing the Tax Returns with the appropriate taxing authorities. Buyer shall have the right to review the draft of the Tax Returns provided to it by Seller and Seller shall make all reasonable changes provided by Buyer. With respect to the preparation of such Tax Returns, Buyer and Seller agree that Transaction Expenses incurred by the Group Entities and reflected in the final determination of the Purchase Price will be treated as allocable to periods ending on or before the Closing Date to the extent deductible in such period. Seller shall cause the Group Entities to prepare and file all income Tax Returns for the Group Entities for all Straddle Periods.
- (b) **Election.** Buyer or Seller shall have the right to cause an election under subsection 256(9) of the Tax Act to be made with respect to the Tax period of the Group Entity ending as a result of the Transaction.
- (c) **Co-operation.** Buyer and Seller shall (i) provide each other with such assistance as may be reasonably requested in connection with the review of any Tax Return, and (ii) cooperate fully, as and to the extent reasonably requested by any other Party, in connection with any audit, litigation or other proceeding with respect to Taxes (a "**Tax Contest**") (such cooperation shall include the retention and (upon the other Party's reasonable request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees and advisors available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder). Group Entities shall retain all records and information relevant to such Tax Returns.
- (d) **Conduct of Tax Contests.** Subject to Section 9.2(e), Seller shall have carriage of any Tax Contest for any Pre-Closing Taxes (other than with respect to a Straddle Period) to the extent Seller is liable to indemnify such Taxes under this Agreement. With respect to any Tax Contest for which Seller has carriage, (i) Seller shall keep Buyer fully informed regarding the status of such Tax Contest and Buyer shall be provided copies of any correspondence relating to such Tax Contest; (ii) Seller shall consult in good faith with Buyer regarding the defense of such Tax Contest, and Seller will provide Buyer a reasonable opportunity to comment on any representations or submissions proposed to be made to a Governmental Authority in respect of such Tax Contest and to attend any meeting with any such Governmental Authority with respect to such matters; and (iii) Seller shall not resolve or abandon such Tax Contest without the prior written consent of Buyer which shall be provided within thirty (30) days of a written request from the Seller and which shall not be unreasonably withheld, provided, however, that Buyer shall have the right not to consent to the settlement or compromise of any Tax Contest where such settlement or compromise would result in an increase in the Tax Liabilities or would otherwise adversely affect any Group Entity or its Affiliates in any Post-Closing Tax

Period. This Section 9.2(d) shall apply, *mutatis mutandis*, with respect to Buyer's carriage of any Tax Contest in respect of a Straddle Period.

- (e) **Payment.** If any Governmental Authority is entitled to take collection action in respect of Pre-Closing Taxes over which Seller would be liable to indemnify Buyer (or its Affiliates) under this Agreement, notwithstanding the defense relating thereto, or to the extent a payment is required to be made to pursue a Tax Contest, Seller shall pay or cause to be paid to Buyer an aggregate amount equal to such amount that is subject to such collection action or that is required to be paid to pursue the Tax Contest to the relevant Governmental Authority within the time required by Law before it shall be entitled to take carriage of such Tax Contest (each such amount being a “**Compulsory Payment**”).
- (f) **Tax Filings.** Buyer, on the one hand, and Seller, on the other hand, shall, for all Canadian and foreign Tax purposes, report the purchase and sale hereunder and the Transaction, in accordance with their form as set out herein, and none of them shall make any available Tax election inconsistent therewith.
- (g) **Excess Election.** In the event that either or both of subsection 184(2) and subsection 185.1(1) of the Tax Act would otherwise apply at any time to all or any part of any dividend or other amount paid by any Group Entity before the time of Closing, such Group Entity or any successors thereof will file an election or elections under either or both of subsection 184(3) and subsection 185.1(2) of the Tax Act in a timely manner with the appropriate Governmental Authority such that no tax is payable by such Group Entity or any successor thereof, as the case may be, under either of Part III and III.1 of the Tax Act in connection with the declaration and payment of such dividend. Seller will give Buyer, such Group Entity, and any successor thereof, all such cooperation and assistance as may be necessary to ensure that such election or elections are duly filed in a timely manner with the appropriate Governmental Authority. Seller agrees that Seller shall concur or shall cause the recipient of the relevant dividend to concur, as applicable, in the making of any election under either or both of subsection 184(3) and subsection 185.1(2) of the Tax Act.
- (h) **Refunds and Credits.** Unless otherwise included as a current asset in Working Capital, the amount of any refunds or credits actually utilized to offset Taxes payable by the same Group Entity entitled to the credit of Taxes (including any interest paid with respect thereto but net of any Taxes payable by any Group Entity in respect of such refund or interest or that would have been payable in the absence of use of a loss or credit from a tax period that is not a Pre-Closing Tax Period) of, or with respect to, the Group Entities for any Pre-Closing Tax Period (but excluding any such refund or credit arising from the use of a loss or credit or other tax attribute from a tax period that is not a Pre-Closing Tax Period), will be treated as additional purchase price for the Purchased Shares. Buyer shall pay an amount equal to the net amount of any such refunds or credits (net of the exceptions described in the previous sentence) to Seller within thirty (30) calendar days following the date such refunds or credits were paid or credited by the relevant Governmental Authority to the applicable Group Entity. Seller agrees to repay any such amount should any Governmental Authority reverse the refund the credit.
- (i) **Mandatory Reporting.** The Parties agree to reasonably cooperate in good faith to determine whether any transaction set out in this Agreement, or any transaction that may be considered to be part of the same series of transactions as the transactions set out in this Agreement is a “reportable transaction” (as defined in section 237.3 of the Tax Act), is a “notifiable transaction” (as defined in section 237.4 of the Tax Act) or is otherwise required

to be reported to any applicable Governmental Authority under any analogous provision of any comparable Law of any province or territory of Canada (the “**Disclosure Requirements**”). Notwithstanding the foregoing, no Party shall be under any obligation not to report a transaction under the Disclosure Requirements that it determines, acting reasonably, to be subject to a reporting requirement pursuant to the Tax Act or other applicable Law. If, at any time, a Party determines, or becomes aware that an “advisor” (as is or may be defined for purposes of section 237.3 or proposed section 237.4 of the Tax Act) has determined, that the transactions contemplated by this Agreement, or any transaction that may be considered to be part of the same series of transactions as the transactions set out in this Agreement, are or would be subject to the Disclosure Requirements, such Party will inform the other Party of its intent, or its advisor’s intent, to comply with the Disclosure Requirements and the Parties will cooperate with respect to preparing and filing the applicable information returns and/or notifications.

- (j) **Inconsistency**. To the extent that there is an inconsistency between this Section 9.2 and Section 10.8 as it relates to any Tax Contest, the provisions of this Section 9.2 shall govern.
- (k) **Transfer Taxes**. Seller will pay, or cause to be paid, all stamp tax, transfer tax, land transfer tax or other similar Tax imposed in connection with the purchase and sale hereunder and the Transaction (collectively, “**Transfer Taxes**”). Seller agrees to cooperate with Buyer in the filing of any returns with respect to the Transfer Taxes, including promptly supplying any information in its possession that is reasonably necessary to complete such returns and the payment of such amounts due under this Section 9.2(k). For greater certainty, Seller will be exclusively liable for any liability under Section 94 of the Electricity Act in respect of the purchase and sale hereunder and the Transaction.

9.3 Post-Closing Confidentiality.

From and after the Closing, the Parties acknowledge and agree that (a) the terms and conditions of this Agreement and any information, written or oral, related to the negotiation hereof shall be maintained in confidence except as may be disclosed (i) to a Party’s Representative for a legitimate business purpose and/or (ii) pursuant to applicable Law or to enforce a Party’s rights hereunder and (b) Seller shall, and shall cause their respective Affiliates and Representatives, as applicable, to maintain in strictest confidence all confidential and proprietary information concerning the Group Entities and the Business, including information relating to the Transaction or the Group Entities’ financial statements, clients, customers, potential clients or customers, Employees, suppliers, equipment designs, drawings, programs, strategies, analyses, profit margins, sales, methods of operation, products, materials, trade secrets, strategies, prospects or other proprietary information and shall not disclose any of the foregoing to any other Person except where required by applicable Law or as permitted by this Section 9.3; provided that the limitations set out herein shall not apply to information that (i) was known to the public prior to its disclosure or (ii) becomes generally known to the public absent any such disclosure. For further clarity, the Parties acknowledge and agree that the records described in this section may include information exempt from disclosure pursuant to the Municipal Freedom of Information and Protection of Privacy Act, and nothing in this Agreement constitutes consent of either Party to disclose such information, and the Parties shall cooperate to review and apply any applicable exemptions upon either Party receiving any such request. The Parties further acknowledge and agree that any draft by-law (as contemplated by Section 6.13) and related communications may be exempt from disclosure pursuant to the Municipal Freedom of Information and Protection of Privacy Act, and nothing in this Agreement constitutes consent of either Party to disclose such information.

9.4 Employee Retention.

[REDACTED]

9.5 Advisory Committee.

[REDACTED]

**ARTICLE 10
INDEMNIFICATION**

10.1 Indemnification in Favour of Buyer.

- (a) From and after the Closing, subject to the limitations set out in Sections 10.3, 10.4 and 10.9, Seller shall indemnify and save each Buyer Indemnified Party harmless for, from and against any Damages suffered by or imposed upon any Buyer Indemnified Party as a result of, in respect of, in connection with, or arising out of, under, or pursuant to:
 - (i) any failure of Seller to perform or satisfy any of its respective covenants or obligations under this Agreement;
 - (ii) any breach or inaccuracy of any representation or warranty (other than the Fundamental Representations) given by Seller contained in this Agreement or any certificate delivered hereunder;
 - (iii) any breach or inaccuracy of any Fundamental Representations given by Seller contained in this Agreement or any certificate delivered hereunder;
 - (iv) any amounts in respect of Closing Indebtedness or Closing Transaction Expenses which are not reflected in the final calculation of the Purchase Price;
 - (v) any Liabilities for Taxes of the Group Entities arising with respect to any Pre-Closing Taxes that are not otherwise reflected in the final calculation of Closing Date Working Capital; and

- (vi) any fraud or intentional misrepresentation by Seller.
- (b) If Closing occurs and a Buyer Indemnified Party makes a claim against Seller for Damages, then Seller shall not be entitled to, and waives any right to, make any claim against any Group Entity in respect of any such Damages by contribution, warranty or otherwise, or require that any Group Entity be a party to the principal claim.

10.2 Indemnification in Favour of Seller.

Subject to the limitations set out in Sections 10.3, 10.4 and 10.9, Buyer shall indemnify and save each Seller Indemnified Party harmless for, from and against any Damages suffered by, imposed upon or asserted against any Seller Indemnified Party as a result of, in respect of, in connection with, or arising out of, under or pursuant to:

- (a) any failure of Buyer to perform or satisfy any of its covenants or obligations under this Agreement; and
- (b) any breach or inaccuracy of any representation or warranty given by a Buyer contained in this Agreement or any certificate delivered hereunder.

10.3 Time Limitations.

- (a) Unless otherwise expressly set out in this Section 10.3, Buyer may make any claim for Damages under Section 10.1 and Seller may make any claim for damages under Section 10.2, as the case may be, without limitation of time, other than by such limitations as are imposed by Law.
- (b) Notwithstanding Section 10.3(a), Buyer Indemnified Parties shall not be entitled to recover Damages from Seller pursuant to:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

10.4 Other Limitations on Recourse and Indemnification Obligations.

In addition to the time limitations set out in Section 10.3 above, the obligations of indemnification of Seller set out in Section 10.1 and the obligations of indemnification of Buyer set out in Section 10.2, as the case may be, shall be limited as follows:

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

10.5 Other Indemnification Matters.

- (a) The remedies provided in this Article 10 shall be the exclusive remedies (other than specific performance to enforce any payment or performance due hereunder pursuant to Section 10.12 and other than in the case of fraud or intentional misrepresentation) of the Parties from and after the Closing in connection with any breach of any representation, warranty or covenant under this Agreement.
- (b) Notwithstanding anything in this Agreement to the contrary, for purposes of Seller's indemnification obligations in this Agreement, the representations and warranties of Seller in this Agreement that are qualified as to "Material Adverse Effect" or to "material" shall be deemed to have been made without any such qualification for purposes of determining (i) whether a breach of any such representation or warranty has occurred and (ii) the amount of any Damages resulting from or arising out of any breach of any such representation or warranty.
- (c) The representations, warranties and covenants of the Indemnifying Party, and the Indemnified Party's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Party or by reason of the fact that the Indemnified Party knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Party's waiver of any condition set forth in Article 8.

10.6 Notification.

■

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

10.7 Direct Claims.

■ [REDACTED]

■ [REDACTED]

10.8 Third Party Claims.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

10.9 Duty to Mitigate.

Nothing in this Agreement in any way restricts or limits the general obligation at Law of an Indemnified Party to mitigate any Damage which it may suffer or incur by reason of the breach by an Indemnifying Party of any representation, warranty or covenant of the Indemnifying Party under this Agreement.

10.10 Payment of Indemnification.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

10.11 Adjustment to Purchase Price.

Any payment made to a Buyer Indemnified Party pursuant to this Article 10 shall constitute a dollar for dollar decrease of the Purchase Price and any payment made to a Seller Indemnified Party pursuant to this Article 10 shall constitute a dollar for dollar increase of the Purchase Price.

10.12 Specific Performance.

The Parties expressly acknowledge that the failure by a Party to perform or comply with a covenant contained in this Agreement prior to Closing may give rise to irreparable injury to the other Party which may be inadequately compensable in Damages and nothing in this Agreement shall limit any Party's right to seek and obtain an injunction or injunctions to prevent breaches of this Agreement or to enforce specifically the performance of this Agreement.

10.13 Benefit to Indemnified Parties.

- (a) Seller hereby constitutes Buyer as trustee for each of Buyer Indemnified Parties of the covenants of Seller under this Article 10 with respect to such Buyer Indemnified Parties and Buyer accepts such trust and agree to hold and enforce such covenants on behalf of Buyer Indemnified Parties.
- (b) Buyer hereby constitutes Seller as trustee for each of Seller Indemnified Parties of the covenants of Buyer under this Article 10 with respect to such Seller Indemnified Parties and Seller accepts such trust and agrees to hold and enforce such covenants on behalf of Seller Indemnified Parties.

10.14 Release of Escrow.

On the fifth (5th) Business Day following the date which is eighteen (18) months following the Closing Date ("**Indemnity Escrow Release Date**"), Buyer and Seller shall provide a joint notice and direction to the Escrow Agent, pursuant to this Agreement and the Escrow Agreement, for the release of any remaining amount of the Indemnity Escrow Amount to Seller, less the sum of all Unresolved Claims, if any. Upon the resolution of all Unresolved Claims, in the event that, following the satisfaction of any and all amounts owing with respect thereto, there remains a portion of the Indemnity Escrow Amount which has not been utilized to satisfy such Unresolved Claims, then Buyer and Seller shall promptly provide a joint notice and direction to the Escrow Agent, pursuant to this Agreement and the Escrow Agreement, for the release of any such amount to Seller.

ARTICLE 11 MISCELLANEOUS

11.1 Notices.

Any notice, direction or other communication given regarding the matters contemplated by this Agreement (each a "**Notice**") must be in writing, sent by personal delivery, courier, or electronic mail and addressed:

- (a) to Buyer at:

c/o ENWIN Utilities Ltd.
4545 Rhodes Drive
P.O. Box 1625 Station A
Windsor, Ontario
N8W 5T1

Attention: Corporate Secretary
Email: secretary@enwin.com

with a copy to:

Torys LLP
79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario
M5K 1N2

Attention: Huw Evans
Email: hevans@torys.com

(b) if to Seller:

The Corporation of the Town of Essex
33 Talbot Street South
Essex, Ontario
N8M 1A8

Attention: Joe Malandrucolo
Email: jmalandrucolo@essex.ca

with a copy to:

McTague Law Firm LLP
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

Attention: Brian Chillman and Jeffrey MacKinnon
Email: bchillman@mctague.law jmackinnon@mctague.law

A Notice is deemed to be given and received (i) if sent by personal delivery or same day courier, or electronic mail, on the date of delivery if it is a Business Day and the delivery was made prior to 5:00 p.m. (local time in place of receipt) and otherwise on the next Business Day provided that if a Notice is given by email the sender has not received an electronic notice to the effect that such Notice was not delivered or received by the Person to whom it was addressed, or (ii) if sent by overnight courier, on the next Business Day. A Party may change its address for service from time to time by providing a Notice in accordance with the foregoing. Any subsequent Notice must be sent to the Party at its changed address. Any element of a Party's address that is not specifically changed in a Notice will be assumed not to be changed. Sending a copy of a Notice to a Party's legal counsel as contemplated above is for information purposes only and does not constitute delivery of the Notice to that Party. The failure to send a copy of a Notice to legal counsel does not invalidate delivery of that Notice to a Party.

11.2 Time of the Essence.

Time shall be of the essence of this Agreement.

11.3 Announcements.

Unless required by Law or by a Governmental Authority, no press release, public statement or announcement or other public disclosure with respect to this Agreement or the transactions contemplated herein may be made except with the prior written consent and joint approval of Seller and Buyer. Where the public disclosure is required by Law or by a Governmental Authority, the Party required to make the public disclosure will use its commercially reasonable efforts to obtain the approval of the other Parties as to the form, nature and extent of the disclosure, which approval shall not be unreasonably withheld, conditioned or delayed.

11.4 Third Party Beneficiaries.

Except as otherwise provided in Section 11.5 and for the Indemnified Parties, the Parties intend that this Agreement shall not benefit or create any right or cause of action in, or on behalf of, any Person other than the Parties and no Person, including any Non-Party Affiliate (as defined below), other than the Parties to this Agreement shall be entitled to rely on the provisions of this Agreement in any Proceeding, hearing or other forum.

11.5 Non-Recourse.

All claims or causes of action (whether in contract or in tort, in Law or in equity) that may be based upon, arise out of or relate to this Agreement or the other Ancillary Agreements, or the negotiation, execution or performance of this Agreement or the other Ancillary Agreements (including any representation or warranty made in or in connection with this Agreement or the other Ancillary Agreements or as an inducement to enter into this Agreement or the other Ancillary Agreements), may be made only against the entities that are expressly identified as parties hereto and thereto. No Person who is not a named party to this Agreement or the Ancillary Agreements, including any past, present or future director, officer, employee, incorporator, member, partner, shareholder, Affiliate, agent, lawyer or Representative of any named party to this agreement or the Ancillary Agreements (“**Non-Party Affiliates**”), shall have any Liability for any obligations or Liabilities arising under, in connection with or related to this Agreement or such Ancillary Agreements (as the case may be) or for any claim based on, in respect of, or by reason of this Agreement or such other Ancillary Agreements (as the case may be) or the negotiation or execution hereof or thereof; and each Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Non-Party Affiliates are expressly intended as third party beneficiaries of this provision of this Agreement.

11.6 Expenses.

Except as otherwise expressly provided in this Agreement, Buyer shall pay for its own costs and expenses and Seller shall pay for its own costs and expenses, in each case, incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the Transaction. Seller shall be responsible for, and shall pay or reimburse the Group Entities for, any Transaction Expenses to the extent not included in the Closing Statement.

11.7 Amendments.

This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by each of the Parties.

11.8 Waiver.

No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar), nor shall such waiver be binding unless executed in writing by the Party to be bound by the waiver. No failure or delay on the part of any Party to exercise any right under this Agreement shall operate as a waiver of such right; nor shall any single or partial exercise of any such right preclude any other or further exercise of such right or the exercise of any other right.

11.9 Non-Merger.

Except for the conditions in Article 8 and as otherwise expressly provided in this Agreement, the covenants, representations and warranties in this Agreement or any certificate delivered hereunder shall not merge on and shall survive the Closing.

11.10 Independent Legal Advice.

Each Party acknowledges that it has been given the opportunity to obtain independent legal advice, with respect to the terms of this Agreement prior to its execution, and each of the Parties further acknowledges and agrees that each of them understands the terms, and their respective rights and obligations, hereunder and under any Ancillary Agreement to which it is a party.

11.11 Entire Agreement.

This Agreement together with the Seller Disclosure Letter and the Ancillary Agreements referred to herein and certificates delivered hereunder and all Schedules, Exhibits and the Confidentiality Provisions constitute the entire agreement between the Parties with respect to the transactions contemplated in this Agreement and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. There are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, between the Parties in connection with the subject matter of this Agreement, except as specifically set forth in this Agreement and neither Party has relied or is relying on any other information, discussion or understanding in entering into and completing the transactions contemplated in this Agreement.

11.12 Exhibits and Schedules.

The Exhibits and Schedules attached to this Agreement, including the Seller Disclosure Letter, shall, for all purposes of this Agreement, form an integral part of it.

11.13 Successors and Assigns.

This Agreement shall become effective when executed and delivered by the Parties and after that time shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

11.14 Assignment.

Neither this Agreement nor any of the rights or obligations under this Agreement shall be assignable or transferable by any Party without the prior written consent of the other Parties, except that Buyer may, without such consent assign any or all of its rights, interests and/or obligations hereunder to an Affiliate; provided that, no such assignment by Buyer to an Affiliate shall relieve Buyer of its obligations hereunder.

11.15 Severability.

If any provision of this Agreement shall be determined by an arbitrator or any court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be severed from this Agreement and the remaining provisions shall continue in full force and effect.

11.16 Governing Law.

This Agreement shall be governed by and interpreted and enforced in accordance with the Laws of the Province of Ontario and the federal Laws of Canada applicable therein. Each Party irrevocably attorns and submits to the exclusive jurisdiction of the courts of Ontario situated in the City of Windsor and waives objection to the venue of any Proceeding in such court or that such court provides an inconvenient forum.

11.17 Counterparts.

This Agreement may be executed in any number of counterparts (including counterparts by facsimile, PDF email or other electronic transmission) and all such counterparts taken together shall be deemed to constitute one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above mentioned.

WINDSOR CANADA UTILITIES LTD.

By:  _____
Name: Garry Rossi
Title: Authorized Signatory

By: _____
Name: Matthew Carlini
Title: Authorized Signatory

**THE CORPORATION OF THE TOWN
OF ESSEX**

By: _____
Name: Sherry Bondy
Title: Mayor

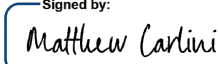
By: _____
Name: Joseph Malandrucolo
Title: Clerk

[Purchase and Sale Agreement]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above mentioned.

WINDSOR CANADA UTILITIES LTD.

By: _____
Name: Garry Rossi
Title: Authorized Signatory

By:  _____
Signed by:
Name: Matthew Carlini
Title: Authorized Signatory

THE CORPORATION OF THE TOWN
OF ESSEX

By: _____
Name: Sherry Bondy
Title: Mayor

By: _____
Name: Joseph Malandrucolo
Title: Clerk

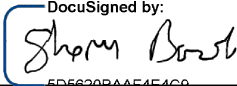
IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above mentioned.

WINDSOR CANADA UTILITIES LTD.

By: _____
Name: Garry Rossi
Title: Authorized Signatory

By: _____
Name: Matthew Carlini
Title: Authorized Signatory

**THE CORPORATION OF THE TOWN
OF ESSEX**

By:  _____
Name: Sherry Bondy
Title: Mayor

By: _____
Name: Joseph Malandrucolo
Title: Clerk

[Purchase and Sale Agreement]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first above mentioned.

WINDSOR CANADA UTILITIES LTD.

By: _____
Name: Garry Rossi
Title: Authorized Signatory

By: _____
Name: Matthew Carlini
Title: Authorized Signatory

**THE CORPORATION OF THE TOWN
OF ESSEX**

By: _____
Name: Sherry Bondy
Title: Mayor

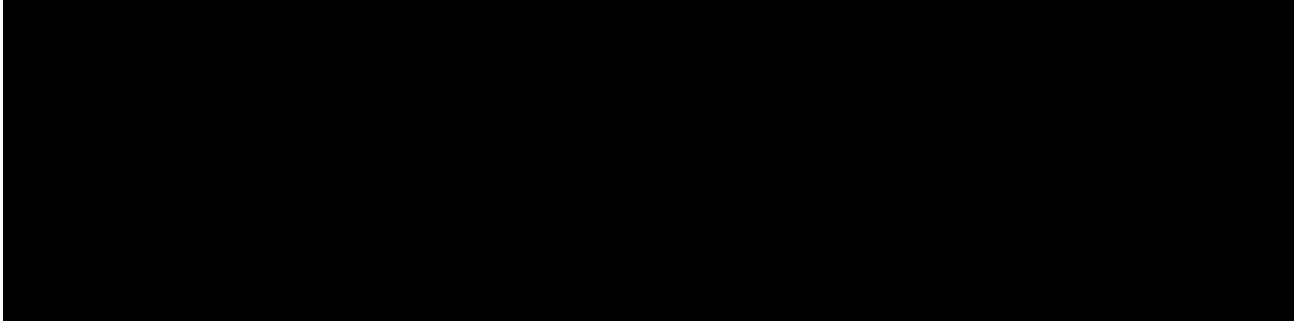
By: _____
DocuSigned by:
Joseph Malandrucolo
C3E7E044130B4BF
Name: Joseph Malandrucolo
Title: Clerk

[Purchase and Sale Agreement]

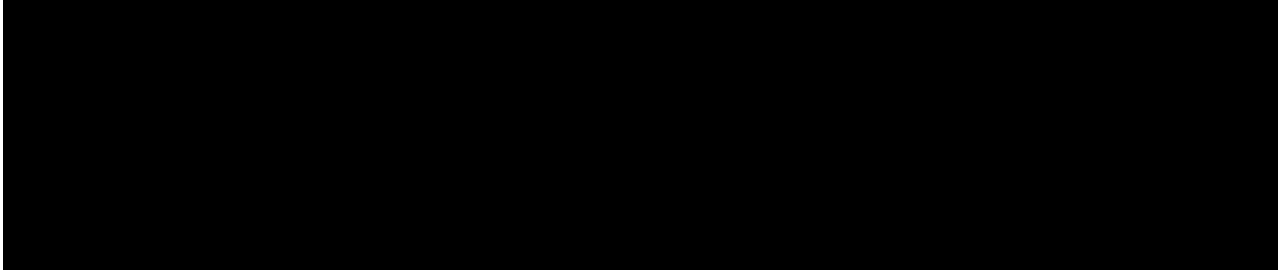
SCHEDULE "A"
SELLER DISCLOSURE LETTER

See attached.

Seller Disclosure Letter
Schedule 1.1 (a) – Permitted Liens



Schedule 3.4 – Third Party Consents



Schedule 4.1 – Business Jurisdictions

1. E.L.K. Energy Inc. Authorized Jurisdiction – Ontario
2. E.L.K. Solutions Inc. Authorized Jurisdiction - Ontario

Schedule 4.5 – Group Entity Consents

1. The OEB Approval

Schedule 4.6 - Authorizations

1. E.L.K. Energy Inc. – Electricity Distribution License, ED-2003-0015, Valid until March 20, 2043.



3. OEB Rate Order EB-2022-0023

Schedule 4.7(a) - Authorized and Issued Capital

E.L.K. Energy Inc:

Authorized Share Cap: *An unlimited number of common shares of one class, designated as Common Shares*

Issued Share Cap: *The Corporation of the Town of Essex - 30,000 Common Shares*

E.L.K. Solutions Inc.

Authorized Share Cap: *An unlimited number of Class A Common Shares and an unlimited number of Class B Common Shares*

Issued Share Cap: *E.L.K. Energy Inc. – 10,000 Class A Common Shares*
The Corporation of the Town of Essex – 10,000 Class B Common Shares

Schedule 4.7(j) – Shareholder Agreements

1. Shareholder Declaration, dated March 6, 2009
2. Shareholder Declaration, dated November 23, 2009
3. Shareholder Declaration, dated February 21, 2023
4. Shareholder Declaration, dated January 15, 2024
5. Shareholder Declaration, dated May 8, 2024

Schedule 4.7 (k) - Officers and Directors

E.L.K. Energy Inc.:

Officers:

Sherry Bondy, Chair

Robbie Shepley, Vice-Chair

Directors:

Sherry Bondy

Robbie Shepley

Kimberly Deyong

Kate Giurissevich

John Kerr

Joseph Malandrucolo

Darren Jeff Scott

Doug Sweet

E.L.K. Solutions Inc.:

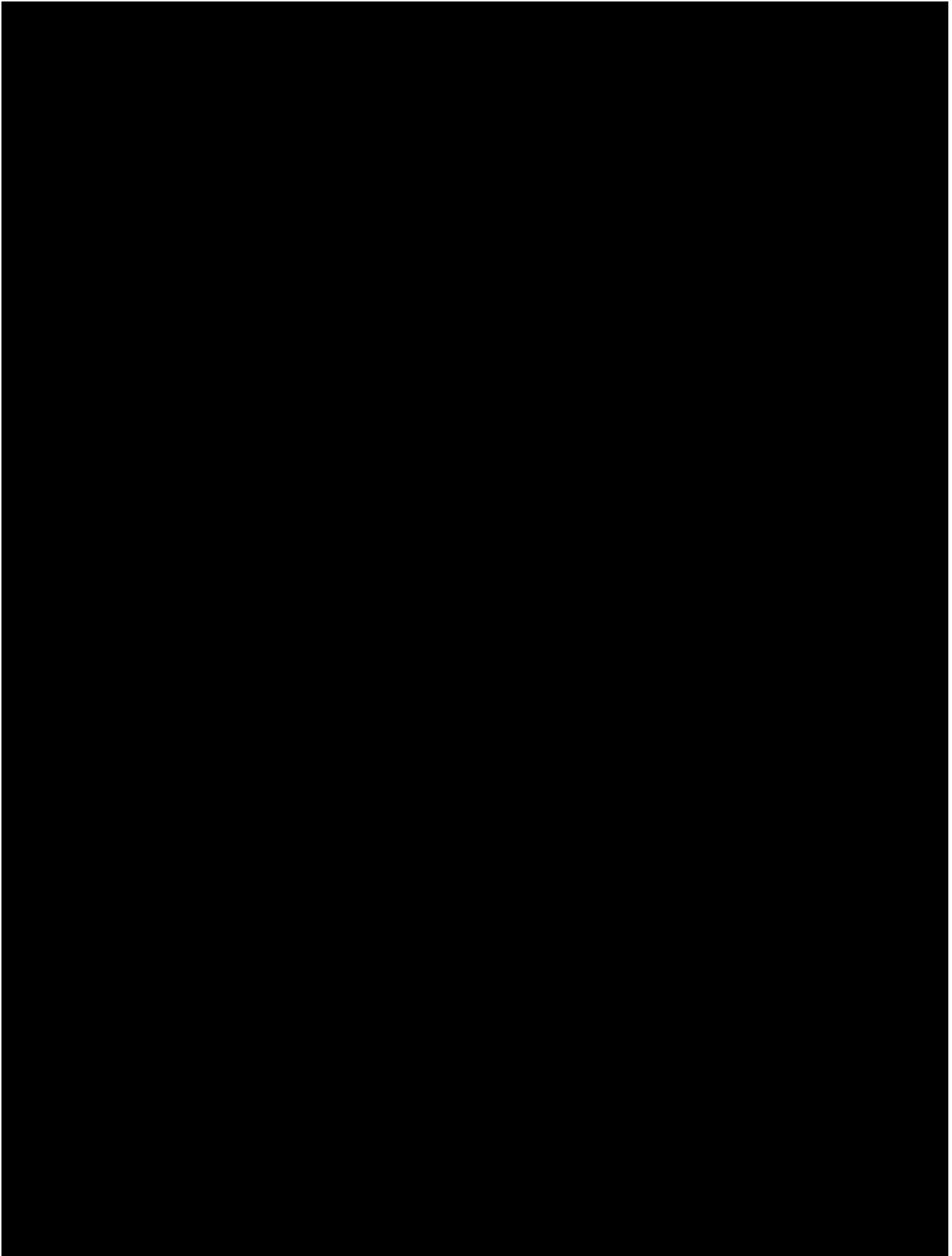
Officer:

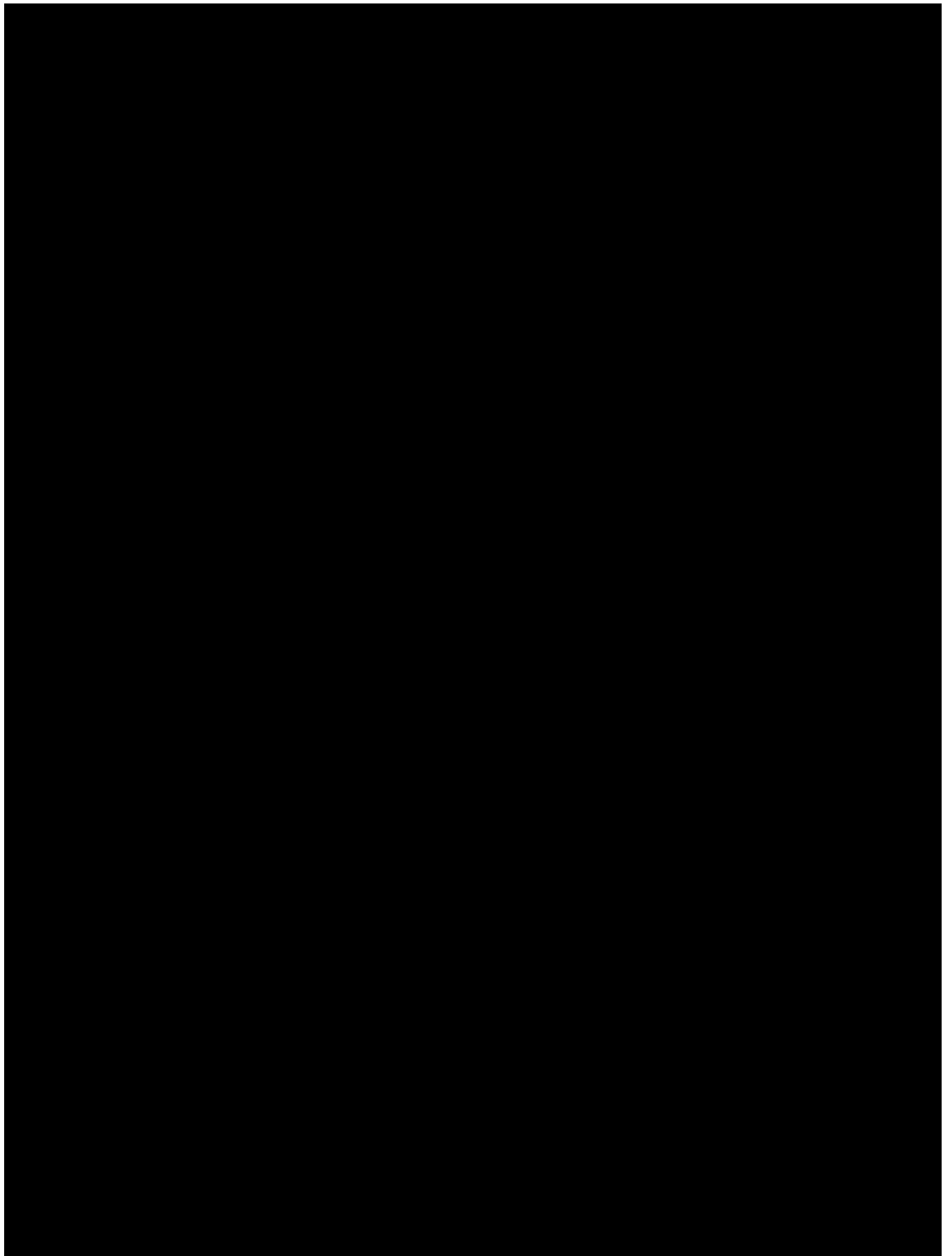
Darren Jeff Scott, Chair

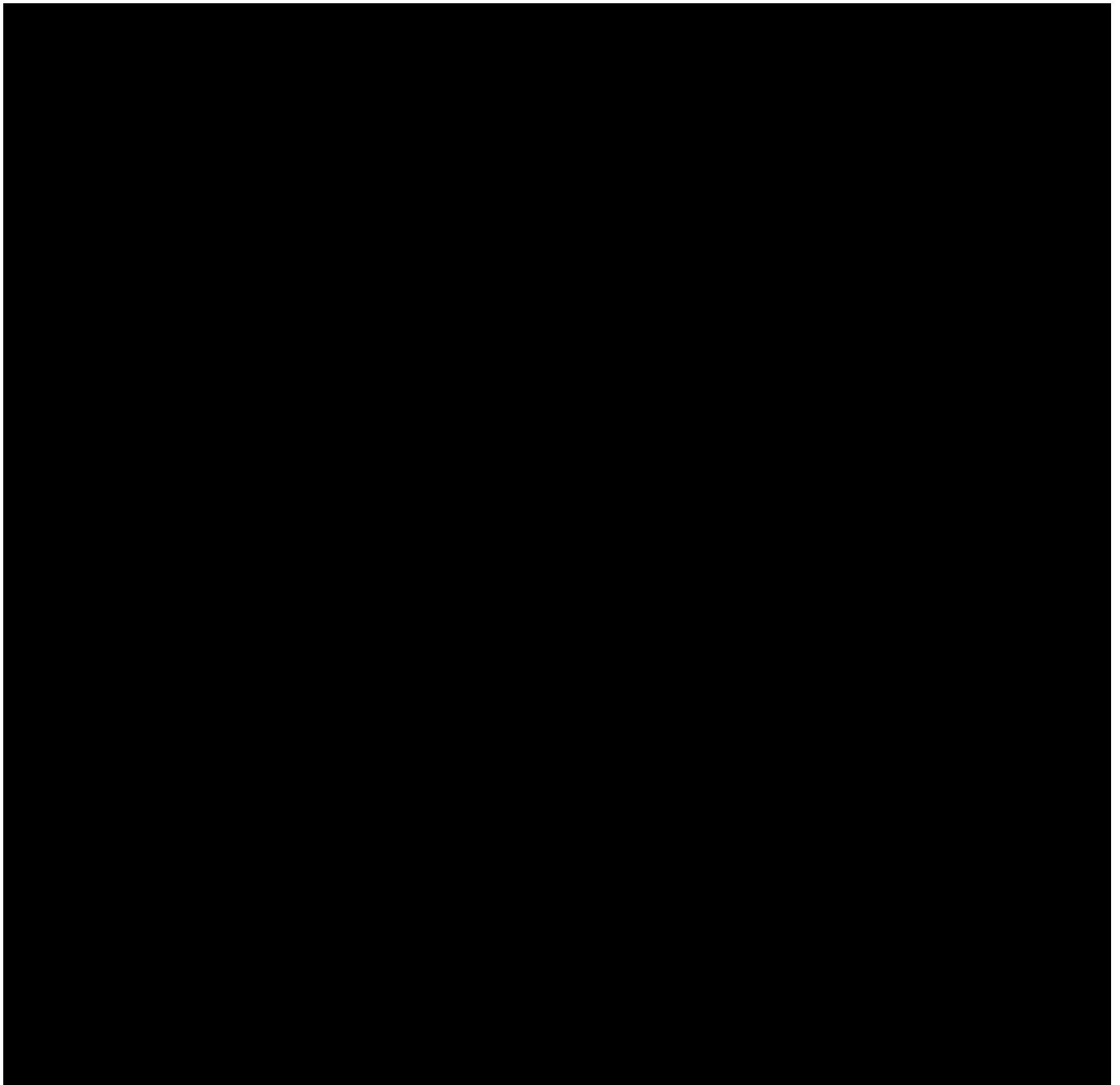
Director:

Darren Jeff Scott

Schedule 4.10 – Conduct of Business



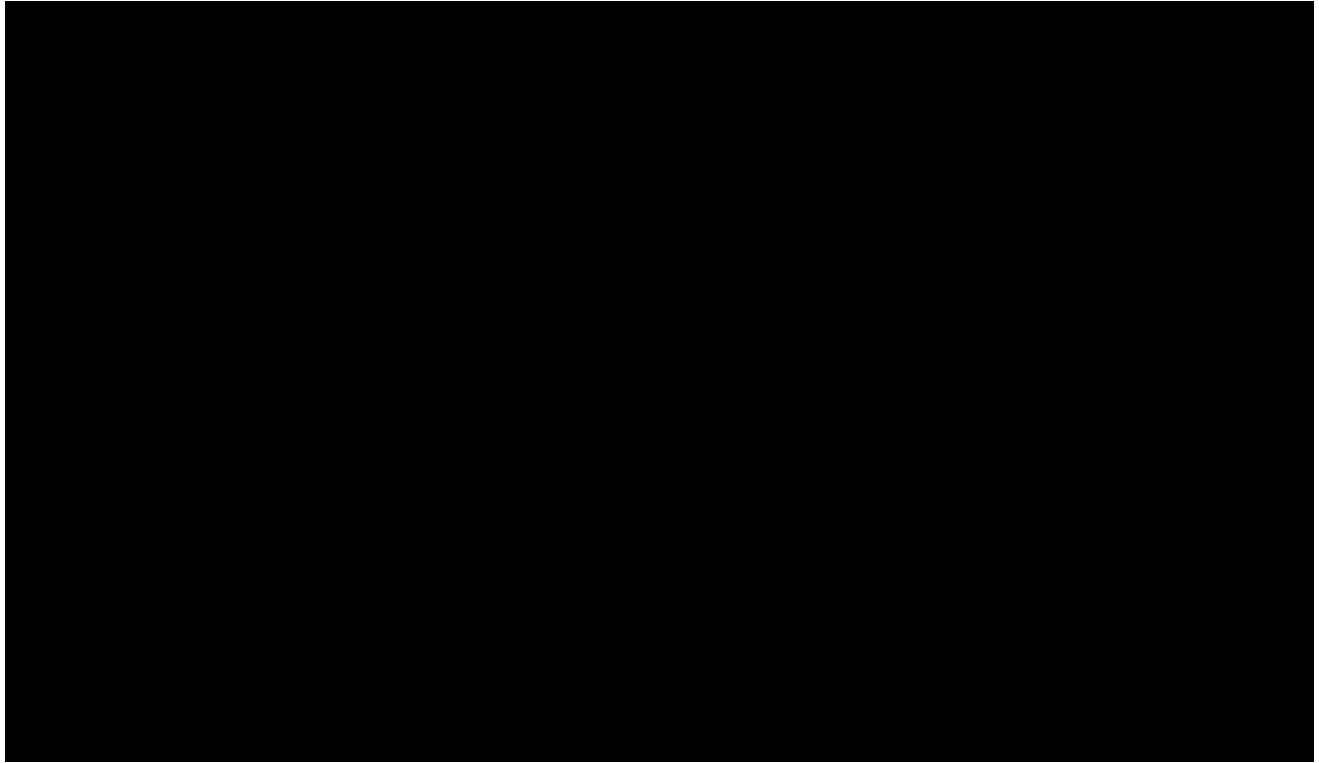




Schedule 4.11(a) – Undisclosed Liabilities

- None

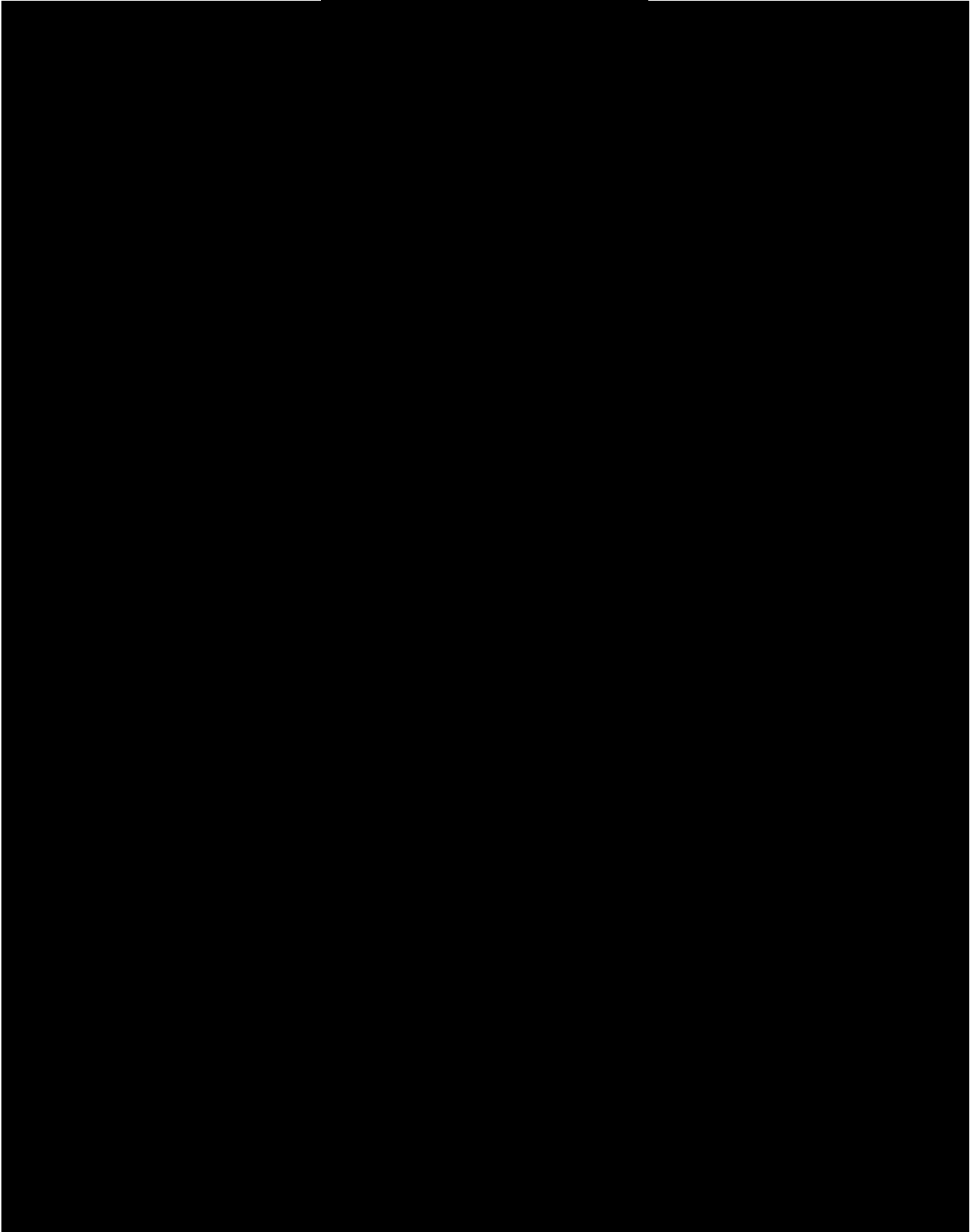
Schedule 4.11(b) – Undisclosed Indebtedness

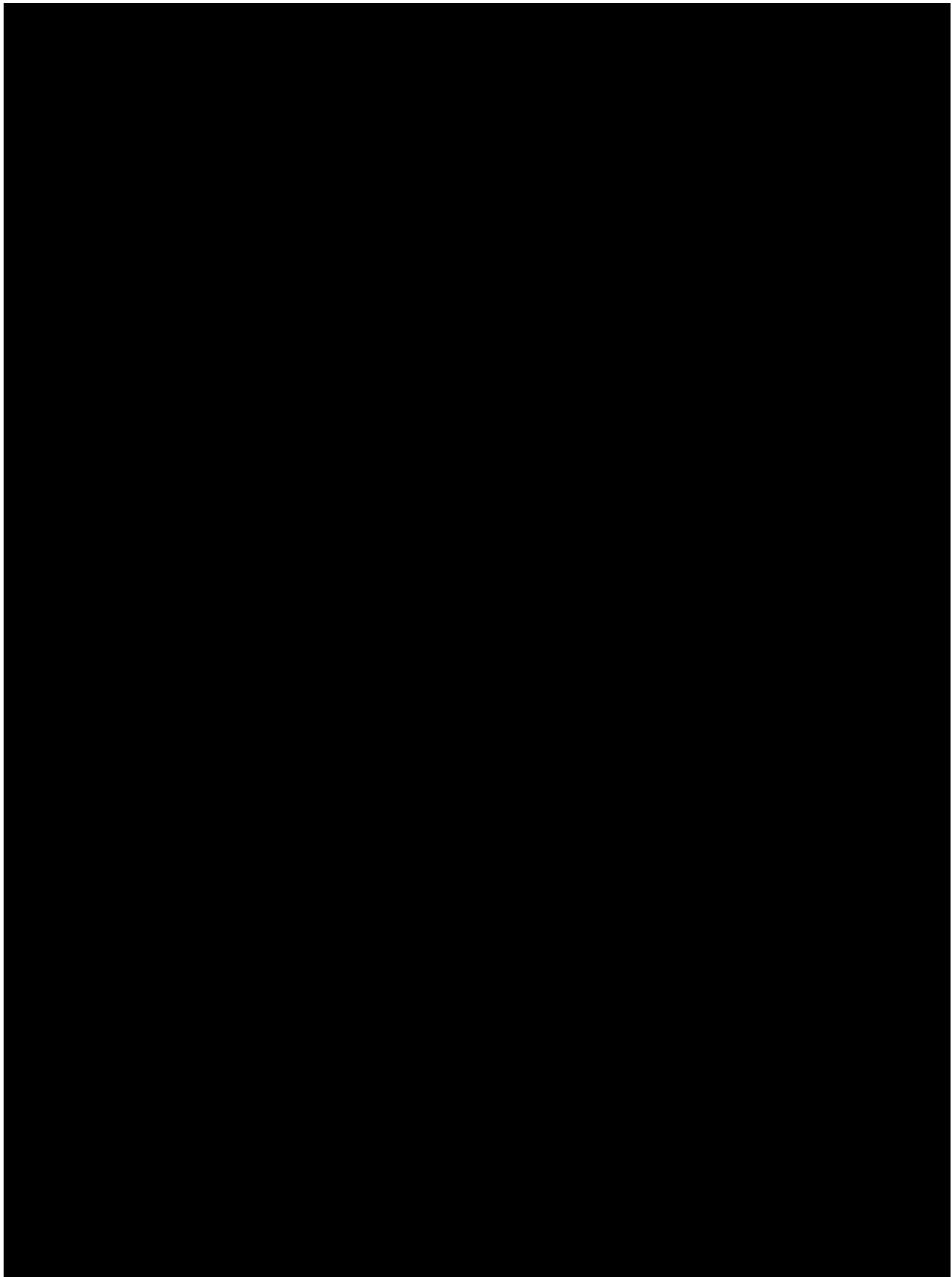


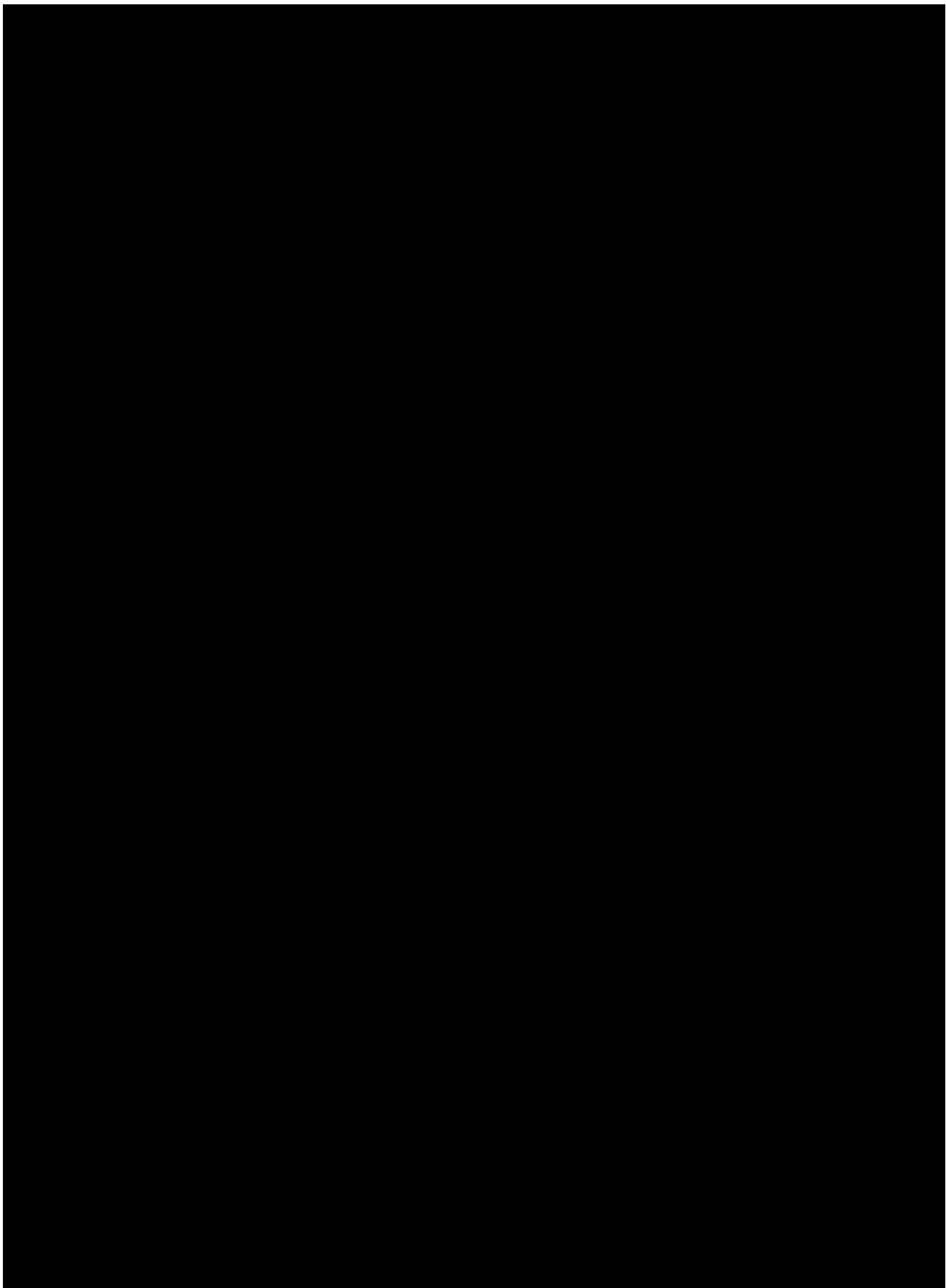
Schedule 4.11(c) – Breach of Indebtedness Agreements

NIL

Schedule 4.12 – Material Contracts

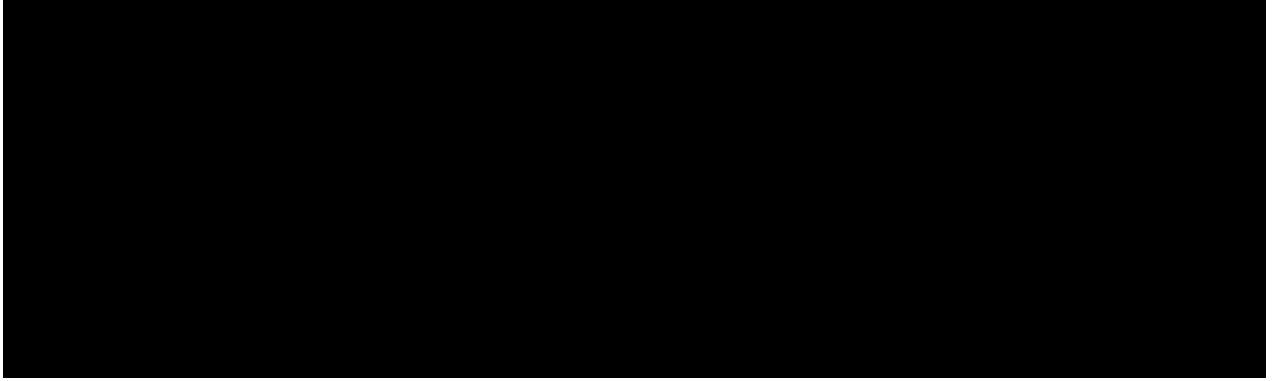








Schedule 4.13 - Proceedings



Schedule 4.14 – Compliance with Laws

-None-

Schedule 4.17 – Owned Real Property

1. E.L.K Energy Inc. - College Street and Maidstone Ave. W. Property, Essex, ON

Legal Description:

PIN: 75017-0052 (LT) being: PT LOT 13 PL 320 ESSEX PT 2 12R5896; ESSEX

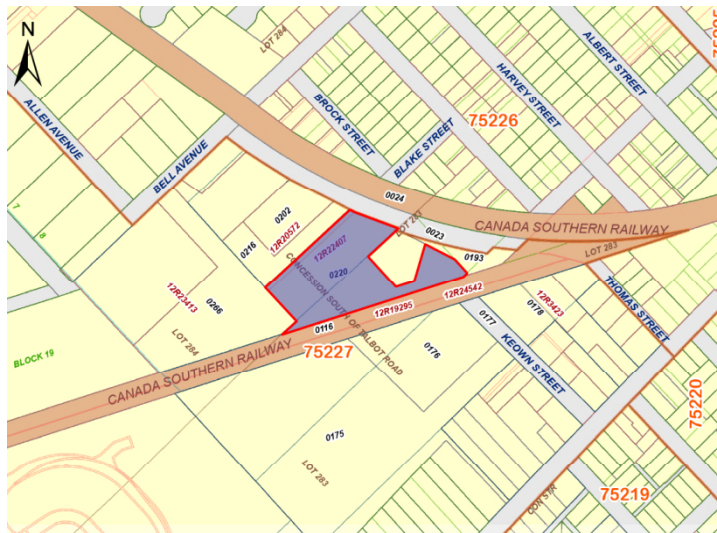


1. E.L.K Energy Inc. - 172 Forest Ave, Essex, ON N8M 3E4

Legal Description:

PIN: 75227-0020 (LT) being: PT N 1/2 LOT 283 CON STR INCLUDING BLOCKS 10 TO 17, 116 TO 122, B, C, D COLCHESTER, PT LOT 284 CON STR INCLUDING BLOCKS 18 TO 24 COLCHESTER ES6830, ES6960 EXCEPT R174555, PT FOREST AVE AS SHOWN ON PL 295, PT BLOCK 18 FORMERLY PART LOT 284 CON STR, COLCHESTER

1. DESIGNATED AS PT 3 ON PL 12R22407



Schedule 4.17 (b) – Leases of Owned Real Property

NIL

Schedule 4.21(b) – Hazardous Materials

NIL

Schedule 4.21(d) – Hazardous Materials Remediation Notice

NIL

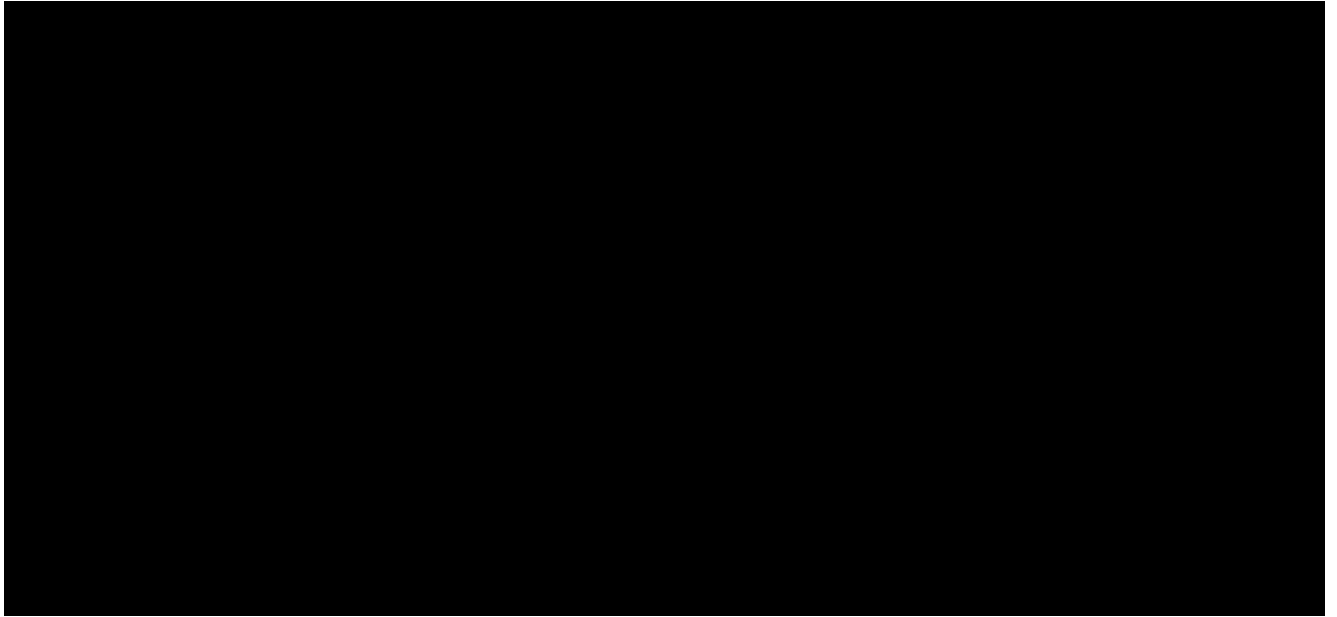
Schedule 4.23(a) - Intellectual Property



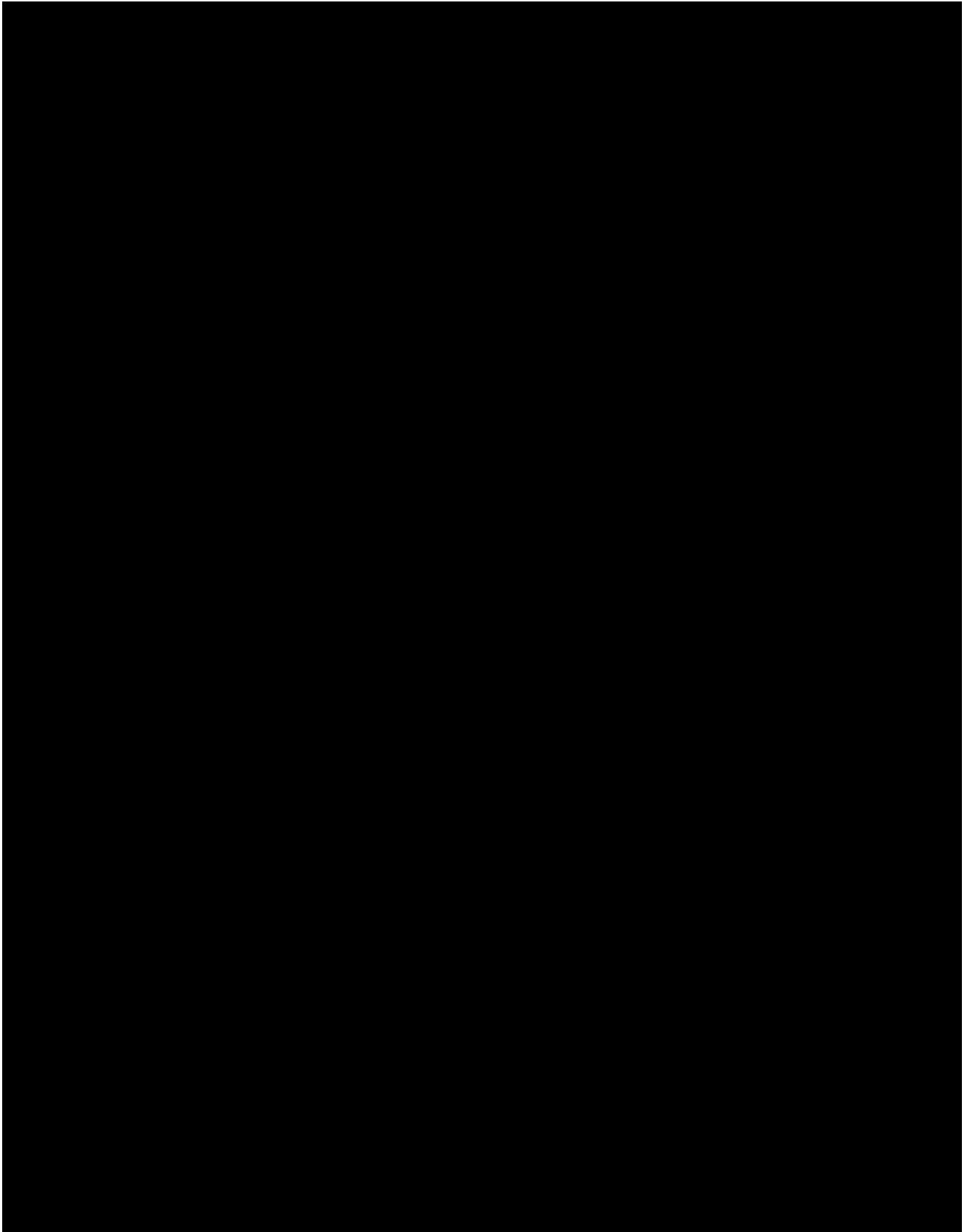
Schedule 4.23(b) – Owned Intellectual Property

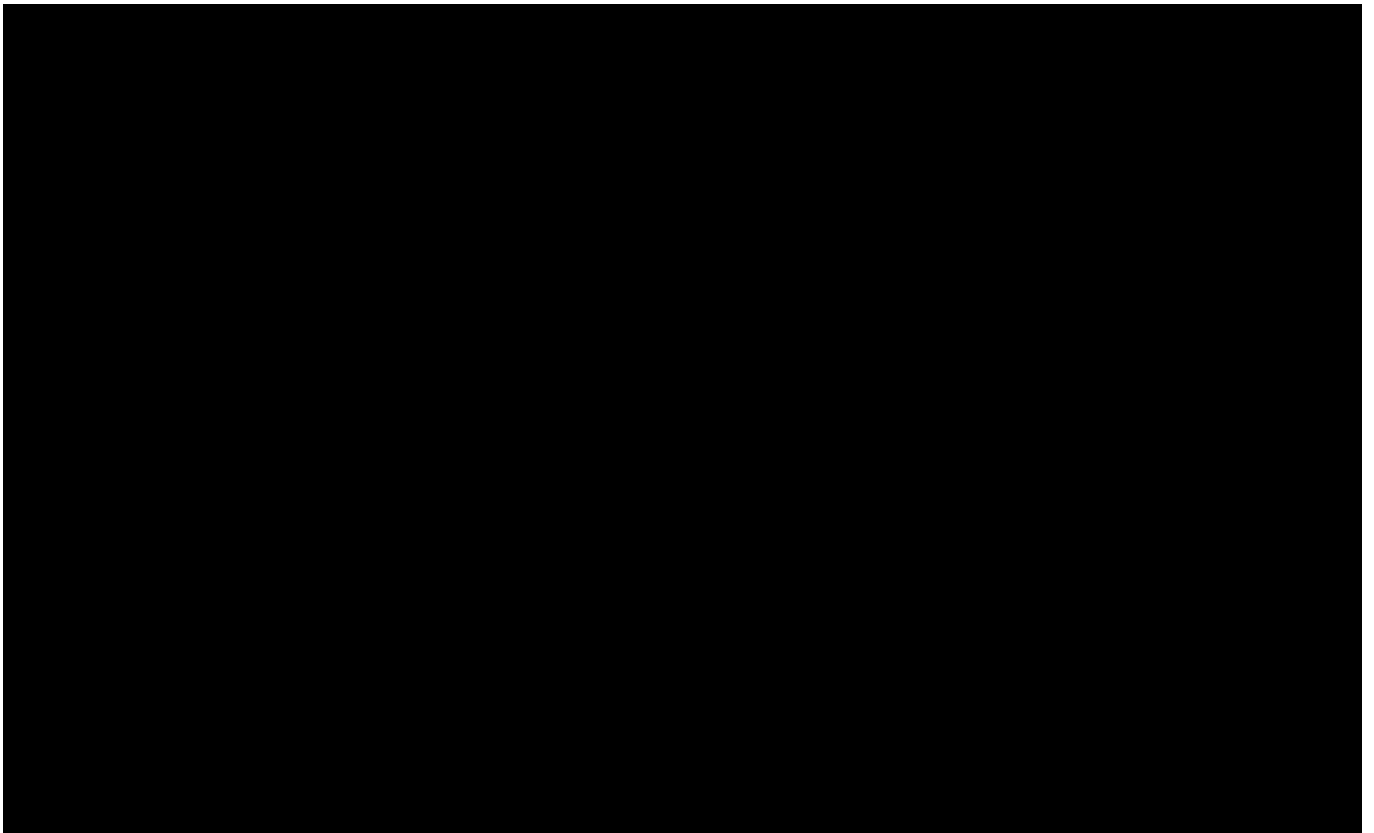
See 4.23 (a)

Schedule 4.25 – Insurance Policies

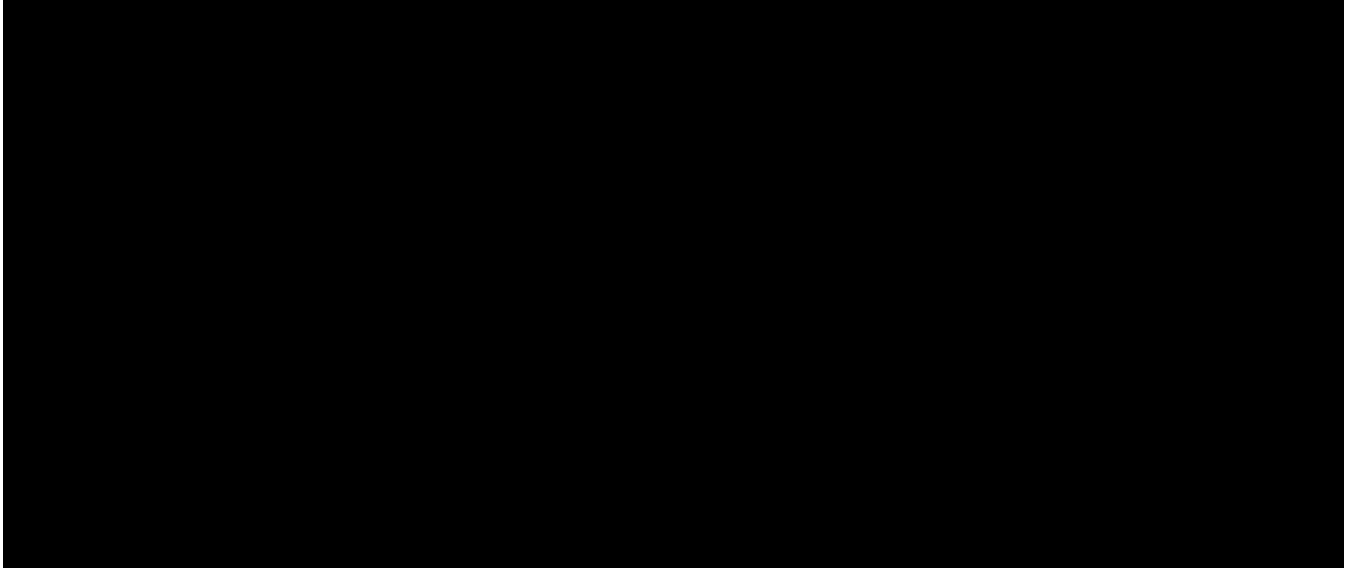


Schedule 4.26(a) Employee Listing





Schedule 4.26(b) – Independent Contractors



Schedule 4.26(f) – Severance Entitlement Employee Contracts

NIL

Schedule 4.26(h) – Collective Agreements

- E.L.K Energy Inc. & International Brotherhood of Electrical Workers LOCAL 366 (2022-2025)
- 2025 Collective Agreement to be negotiated in March, 2025

Schedule 4.26(j) – Notices of Employment Termination

NIL

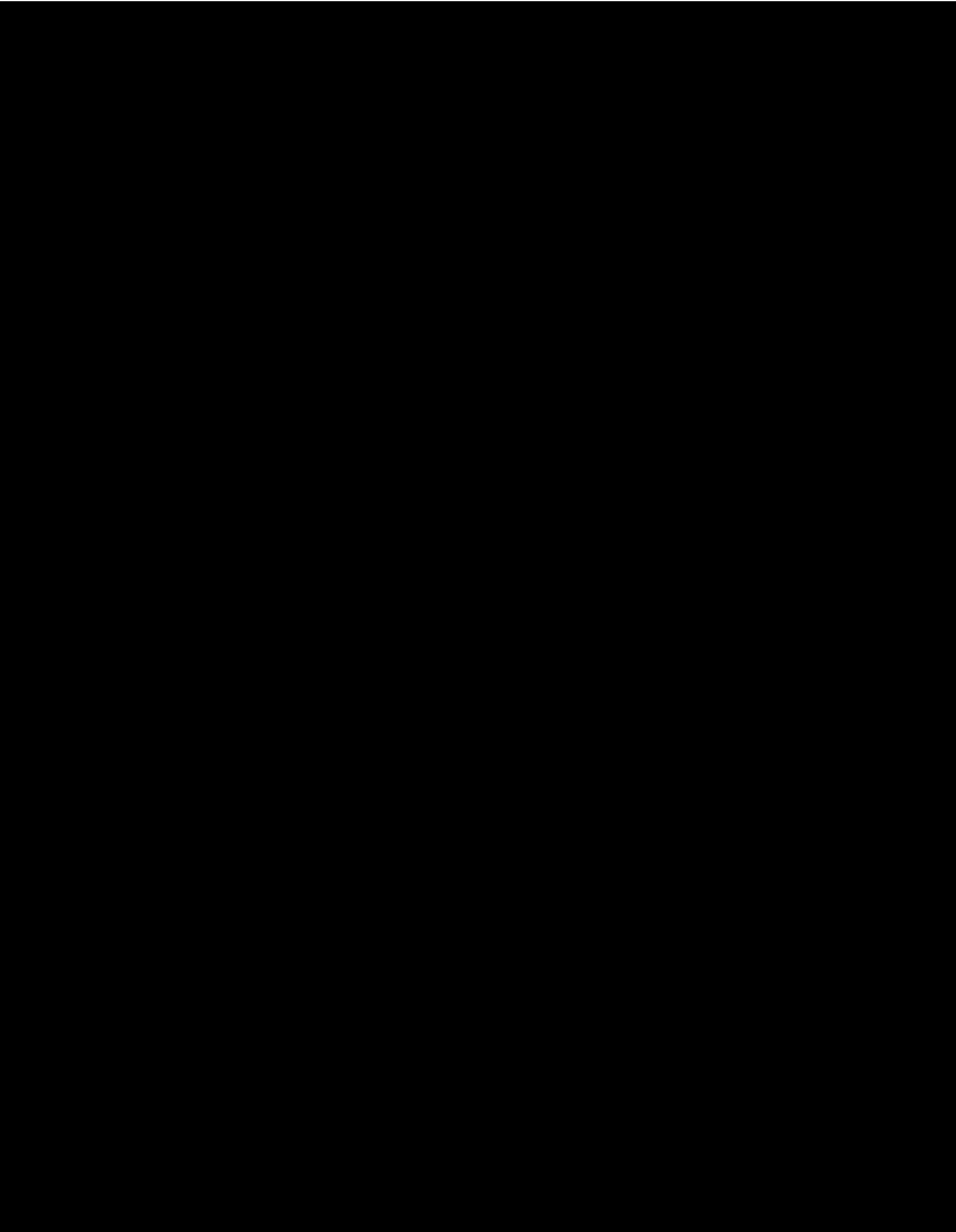
Schedule 4.26(n) - Employees on layoff etc.

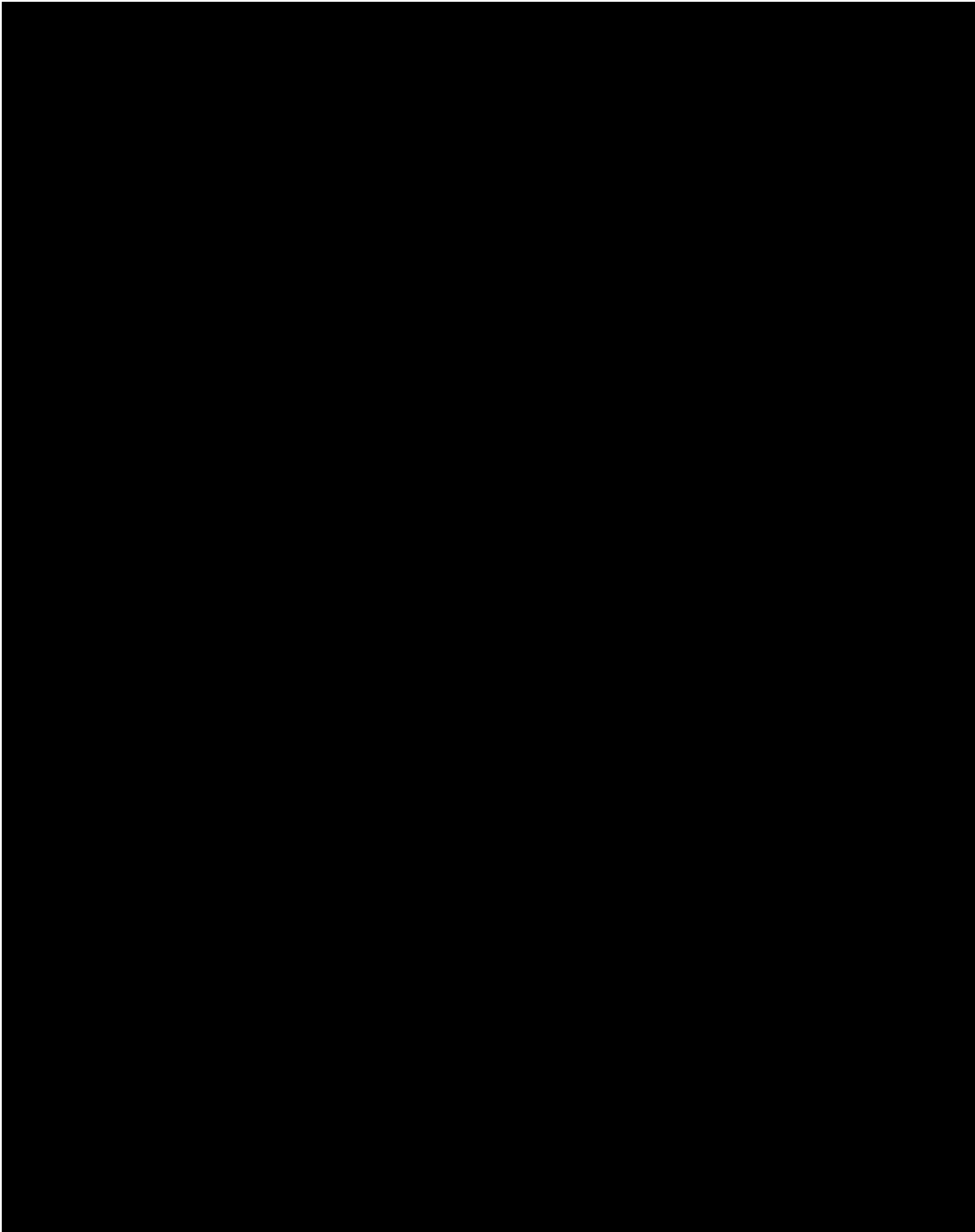
NIL

Schedule 4.27(a) – Benefit Plans



OMERS Plan





the 1990s, the number of people in the world who are under 15 years of age has increased by 1.2 billion, from 1.1 billion in 1980 to 2.3 billion in 1999. The number of people aged 15 years and over has increased by 1.1 billion, from 1.1 billion in 1980 to 2.2 billion in 1999.

There are a number of reasons why the world population is growing so rapidly. One of the main reasons is that the number of children born to each woman has increased. This is due to a number of factors, including improved medical care, increased access to contraception, and a shift in cultural values.

Another reason why the world population is growing so rapidly is that the number of people who are surviving into old age has increased. This is due to a number of factors, including improved medical care, increased access to health care, and a shift in cultural values.

There are a number of challenges that the world population growth poses. One of the main challenges is that it is putting a strain on the world's resources. This is because the world's population is growing so rapidly that it is difficult to provide enough food, water, and shelter for everyone.

Another challenge is that the world population growth is putting a strain on the world's environment. This is because the world's population is growing so rapidly that it is difficult to provide enough clean air, water, and land for everyone.

There are a number of ways that the world population growth can be managed. One way is to improve the world's medical care and health care. This would help to reduce the number of people who are dying from preventable causes.

Another way is to increase access to contraception. This would help to reduce the number of children born to each woman.

There are a number of other ways that the world population growth can be managed. These include improving the world's food and water supply, and increasing access to education and health care.

The world population growth is a complex issue that requires a number of different approaches to manage it. It is important that we work together to find solutions that will help to manage the world population growth in a sustainable way.

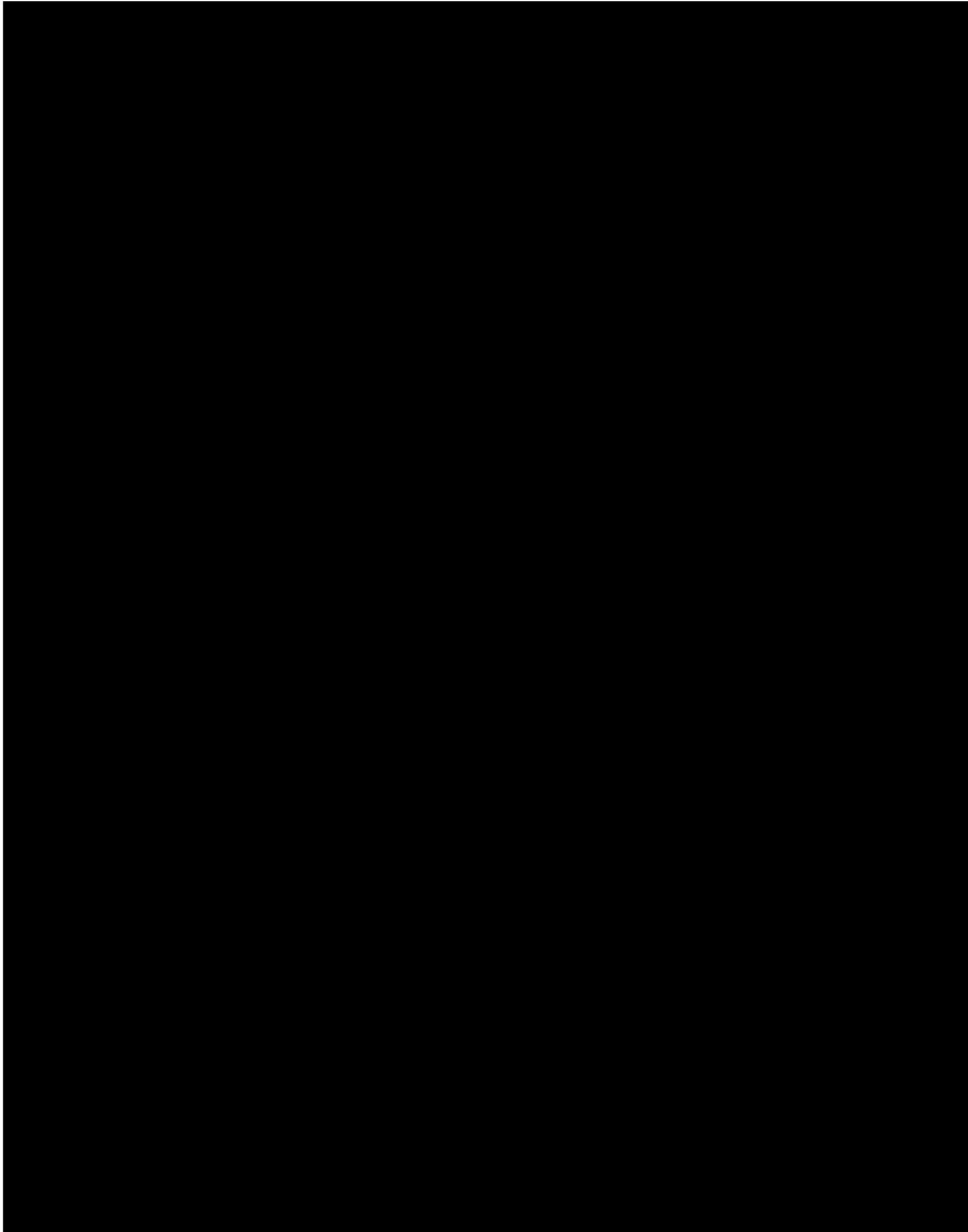
The world population growth is a complex issue that requires a number of different approaches to manage it. It is important that we work together to find solutions that will help to manage the world population growth in a sustainable way.

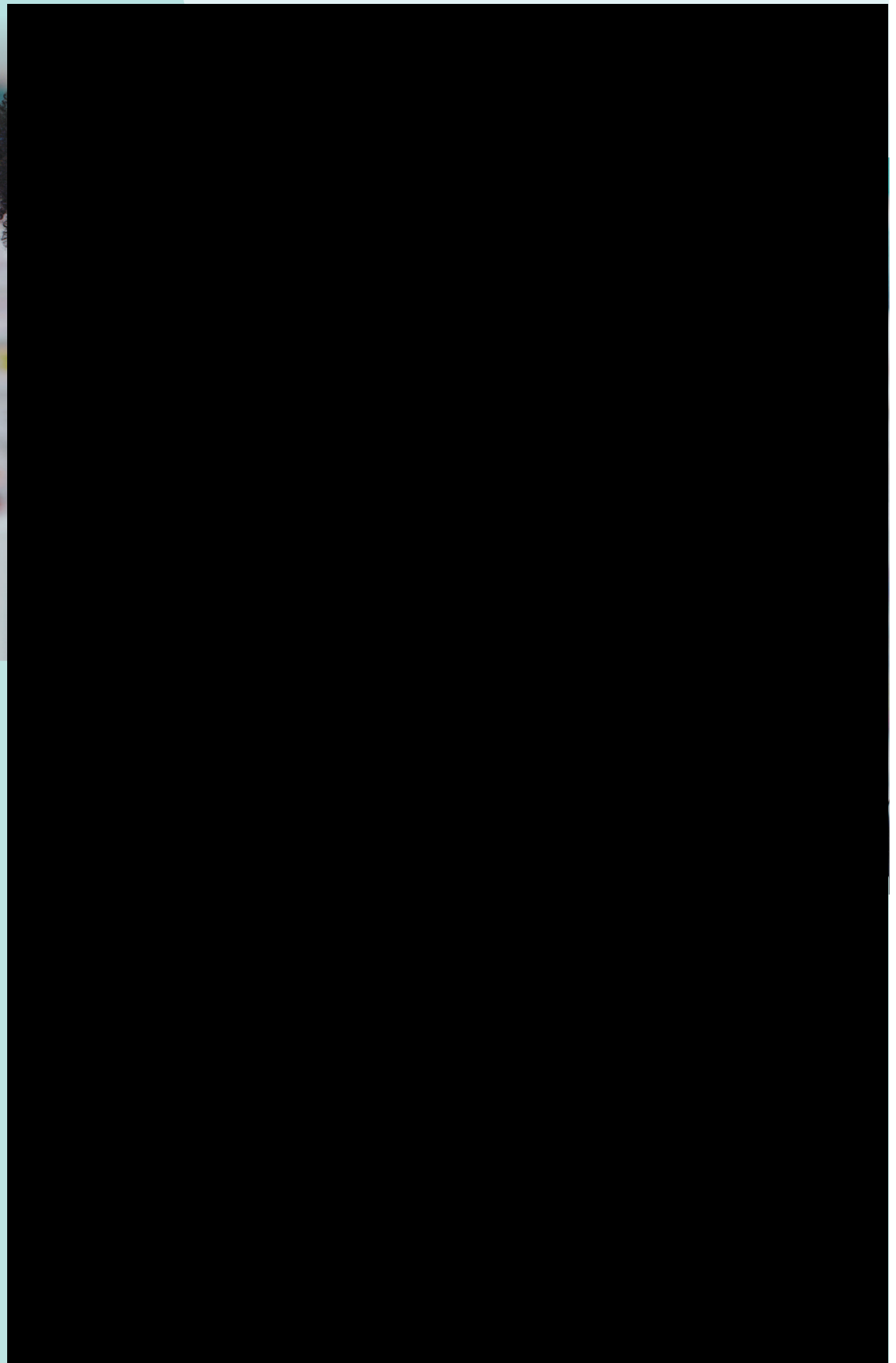
The world population growth is a complex issue that requires a number of different approaches to manage it. It is important that we work together to find solutions that will help to manage the world population growth in a sustainable way.

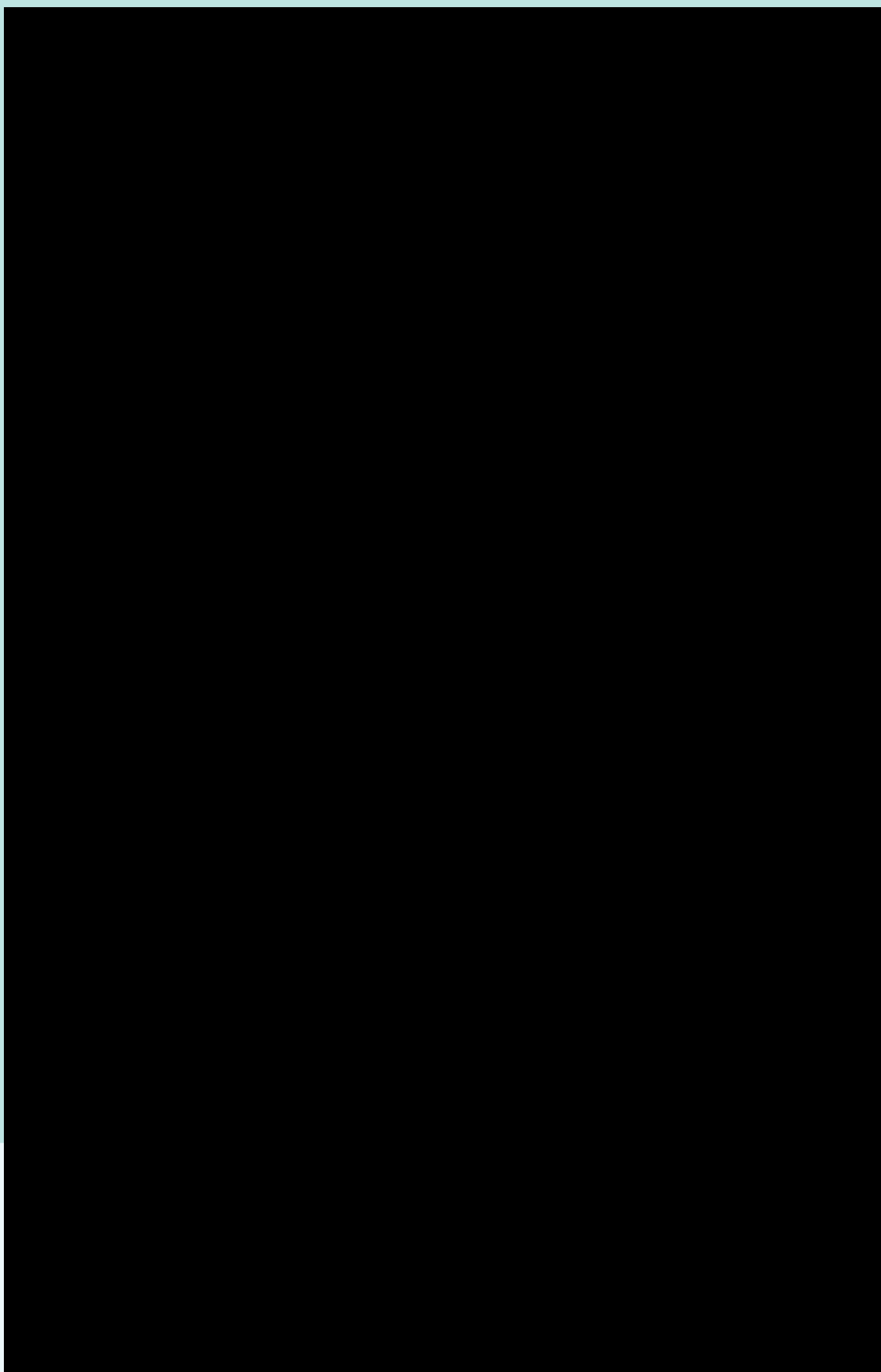
The world population growth is a complex issue that requires a number of different approaches to manage it. It is important that we work together to find solutions that will help to manage the world population growth in a sustainable way.

The world population growth is a complex issue that requires a number of different approaches to manage it. It is important that we work together to find solutions that will help to manage the world population growth in a sustainable way.

[The page contains a large, faint, and mostly illegible watermark or bleed-through from the reverse side. The text is mirrored and difficult to decipher, but appears to be a formal document or letter.]









OMERS

Member Handbook

This handbook is a summary of the defined benefit provision of the OMERS Primary Pension Plan (OMERS Plan). In this booklet, we refer to the OMERS Primary Pension Plan as the “OMERS Plan.”

The information in this booklet provides a summary of the terms of the OMERS Plan text at the time of publication. From time to time, the OMERS Plan text may be amended by the OMERS Sponsors Corporation. If there is any discrepancy between this information and the *Ontario Municipal Employees Retirement System Act, 2006* (OMERS Act, 2006) and the OMERS Plan text, the OMERS Act, 2006 and OMERS Plan text will govern.

The OMERS Primary Pension Plan Registration Number is 0345983.

Your Information Is Secure

Providing OMERS with your personal information is considered consent for its use and disclosure for the purposes set out in our Privacy Statement, as amended from time to time. You can find out more about our collection, use, disclosure and retention of personal information by reviewing our Privacy Statement at [omers.com/privacy](https://www.omers.com/privacy).

Printed 2024

Table of Contents

01 Learn About Your OMERS Plan

- 05 Joining the OMERS Plan
- 07 How your pension grows
- 09 Service in the OMERS Plan
- 11 Your contributions
- 12 Tax-efficient retirement savings
- 13 Why contributory earnings matter
- 14 Inflation protection
- 14 OMERS and your RRSP room
- 15 Disability benefits
- 18 Shortened life expectancy
- 19 Benefit calculation changes

02 Planning for Life Events

- 22 Taking a leave
- 22 Leaving your OMERS employer
- 24 Retirement
- 28 Returning to work after retirement
- 28 Separation and divorce
- 29 What happens to your pension when you die

03 Retire with a Bigger OMERS Pension

- 37 Transfers
- 37 Buy-backs

04 Invest in the OMERS Fund with AVCs

Glossary

Learn About Your OMERS Plan



The OMERS Plan is a defined benefit pension plan, which means you can expect a predictable monthly income for life. Together with government benefits and your savings, your OMERS pension can grow into an important financial asset and play a key role in your financial security in retirement.

JOINING THE OMERS PLAN

Full-time employees

If you're a permanent, full-time employee who works at least 32 hours per week (also called continuous full-time), you automatically become a member of the OMERS Plan on the date you are hired by an OMERS participating employer (OMERS employer), or on the date you become full-time. You remain a member even if you change from full-time to non-full-time.

Non-full-time employees

You're a non-full-time employee for OMERS Plan purposes if you work less than a full work week or you work fewer than 12 months a year (for example you are a 10-month, contract or seasonal employee). As a non-full-time employee, you may elect to join the OMERS Plan after you are hired by an OMERS employer. If you elect to join, **the decision cannot be changed** and you will be required to make contributions until you leave your OMERS employer.

Once you enrol

Enrolment in the OMERS Plan generally takes effect in your employer's next available pay period after your election is received. This date can be no later than the end of the month following the month in which the election is received.

Once you become a member, you remain in the OMERS Plan while you are employed with an OMERS employer even if your income decreases or your work status changes to or from full-time status.

Once you join the OMERS Plan, you are encouraged to [create a myOMERS account](#). myOMERS is a secure portal where you'll have access to your myOMERS dashboard, which includes a number of digital self-serve options to quickly and easily update your contact and beneficiary information, generate pension estimates and more. It's easy to create an account. All you need is your email address or phone number and your date of birth.

HOW YOUR PENSION GROWS

The more years of credited service you have in the OMERS Plan, the larger your pension benefit will be. The OMERS defined benefit pension formula takes into account your best five consecutive years of contributory earnings (“best five” earnings) and credited service in the OMERS Plan.

OMERS Lifetime Pension Formula

$$2\% \times \text{credited service (years)} \times \text{“best five” earnings} \\ - \\ 0.675\% \times \text{credited service (years)} \times \text{lesser of “best five” earnings or AYMPPE*}$$

The OMERS lifetime pension is paid to you after you retire for as long as you live.

OMERS Bridge Benefit Formula

$$0.675\% \times \text{credited service (years)} \times \text{lesser of “best five” earnings or AYMPPE*}$$

*Five-year average of the year’s maximum pensionable earnings

If you retire before age 65, the bridge benefit is payable in addition to your OMERS lifetime pension until age 65, when it is expected that most members will start their CPP pension. The OMERS bridge benefit continues to be paid to age 65 even if you start your CPP pension before age 65. From age 65 onward, you continue to collect your lifetime pension.

An OMERS lifetime pension earned in excess of the maximum set by the *Income Tax Act* is paid through the OMERS retirement compensation arrangement (RCA), which is a special fund for this purpose.

See the “Retirement” section on page 24 for more information about how your pension is calculated if you retire before your normal retirement age.

Your pension is “locked-in” as soon as you join the OMERS Plan, and you immediately begin to earn a pension and become entitled to a benefit. When your pension is “locked-in,” you must use it for future retirement income and you cannot cash out the value of your pension or your contributions, except in very specific cases allowed by applicable legislation and the OMERS Plan text.

SERVICE IN THE OMERS PLAN

In the OMERS Plan, there are two types of service.

Credited service

This is the paid service (years and months) you have in the OMERS Plan, including any service you purchased or transferred in.

If you're a continuous full-time employee, you earn one year of **credited service** for every full year you work. If you're non-full-time, we calculate your credited service as a proportion of what a full-time employee in your position would earn. Also, when we calculate your pension as a **non-full-time** employee, we annualize your contributory earnings.

The maximum amount of credited service you can have depends on when you reach 35 years of credited service. Effective January 1, 2021, the 35-year cap for credited service was eliminated. This means that if you had less than 35 years of credited service prior to January 1, 2021, you can continue to accumulate credited service. If you met the 35-year cap on credited service prior to January 1, 2021, the limit on credited service will continue to apply to you.

Eligible service

This is service with any OMERS employer that isn't credited service and is subject to certain limits. It can help bring you closer to an unreduced early retirement pension; however, it does not change the credited service used in the OMERS pension formula. We add your eligible service to your credited service when we calculate your early retirement pension factor (discussed further in the "Retirement" section on page 24).

Examples of eligible service include:

- summer-student work with an OMERS employer where you did not participate in the OMERS Plan;
- service from a prior membership period in the OMERS Plan that was transferred or refunded when you left employment with an OMERS employer;
- unpurchased leaves taken in accordance with applicable employment standards legislation while employed with an OMERS employer (for example, pregnancy/parental leaves); and
- unpurchased waiting periods to join the OMERS Plan.

You may be able to purchase some eligible service and convert it to credited service. See "Retire with a Bigger OMERS Pension" on page 35.

Have you worked for an OMERS employer, but you were not in the pension plan?

Check [myOMERS](#) and make sure that period of employment is included with your eligible service. If it isn't, contact our [Member Experience team](#).

YOUR CONTRIBUTIONS

You will contribute a percentage of your contributory earnings in each pay period to the OMERS Plan. Your OMERS employer will also contribute an equal amount. These contributions will fund a portion of your OMERS pension. Investment earnings of the OMERS Fund will contribute the balance.

To keep the OMERS Plan adequately funded, the OMERS Sponsors Corporation periodically adjusts contribution rates. Your contributions to the OMERS Plan lower your taxable income at source. Amounts you contribute to buy a leave period or past service may also lower your taxable income for the applicable tax year(s).

Required contributions are lower on contributory earnings up to the first earnings limit under the Canada Pension Plan (CPP), i.e., the year's maximum pensionable earnings (YMPE), and higher on any salary above the YMPE. This is determined on a per pay period basis.

Current contribution rates are posted on members.omers.com. The contribution rates will change effective January 1, 2027. See omers.com/contribution-rates-review for more details on the proposed changes and visit members.omers.com for more information about contributions.

If you leave your employer, begin collecting your OMERS pension or die before your pension starts, a test is applied to ensure that your contributions on or after January 1, 1987 do not exceed 50% of the commuted value (CV) of your pension over the same period. Any excess contributions will be refunded to you, your beneficiary or your estate, as applicable.

TAX-EFFICIENT RETIREMENT SAVINGS

Participating in a defined benefit pension plan like the OMERS Plan is a tax-efficient form of saving. Under the *Income Tax Act*, you are eligible for certain tax advantages as a result of your participation in the OMERS Plan, as summarized below:

- You contribute a percentage of your contributory earnings in each pay period to help pay for your future OMERS pension.
- Your employer deducts these contributions from your gross income each pay period, which reduces your taxable income at source. As a result, over the course of the year, the income on which you pay taxes has been reduced by the amount of your pension contributions. This will be reflected on your annual T4 tax slip.
- Contributing to the OMERS Plan is similar to contributing to a Registered Retirement Savings Plan (RRSP). One of the differences is that your tax liability is reduced right away, so that you don't have to wait until you file your tax return to benefit.
- Your employer also contributes an equal amount to the OMERS Plan. These contributions are not a taxable benefit; you do not count them as income.
- Once you retire and begin collecting your OMERS pension, your pension will be taxable and withholding taxes will be deducted from your payments. In many cases, the annual tax liability associated with a member's pension payments will be lower than that of the member's earnings while employed.

Note that all payments from the OMERS Plan are payable in accordance with the *Income Tax Act* and cash payments are subject to applicable taxes withholding at source.

WHY CONTRIBUTORY EARNINGS MATTER

While you're working, you pay OMERS Plan contributions on your regular and recurring "contributory" earnings in each pay period, excluding additional amounts such as overtime pay and also excluding most one-time and lump-sum payments. When you end membership in the OMERS Plan, these same contributory earnings are used to calculate your pension benefit (i.e., the "best five" earnings in the OMERS pension formula).

There are two caps on contributory earnings:

1. Cap on incentive pay

Post-2010 contributory earnings are capped at:

- $150\% \times$ your contributory earnings before incentive pay
- "Incentive pay" is earnings related to performance-based bonus payments and similar pay arrangements. Bonus payments for service retention (common in some sectors like police and fire) are not considered incentive pay.

2. Additional cap

Total annual contributory earnings are limited to seven times the YMPE effective:

- January 1, 2014 for members who enrolled on/after January 1, 2014; and
- January 1, 2016 for members who enrolled before January 1, 2014.

INFLATION PROTECTION

Inflation protection increases OMERS retirement, disability and survivor pensions each year, based on the increase in the Canadian Consumer Price Index (CPI), as follows:

- **Benefits earned on or before December 31, 2022** receive full inflation protection, up to a maximum increase of 6%. Any excess is carried forward so it can be used in later years when the CPI increase is less than 6%.
- **Benefits earned on or after January 1, 2023** are subject to Shared Risk Indexing, meaning that the level of inflation protection will depend on the OMERS Sponsors Corporation Board's annual assessment of the financial health of the OMERS Plan.

To learn more about inflation protection, visit members.omers.com.

OMERS AND YOUR RRSP ROOM

When you are a member of the OMERS Plan, a pension adjustment (PA) must be reported on your T4 tax slip each year and will reduce your available RRSP contribution room. The PA is a deemed value of the pension you earned in a tax year. The Canada Revenue Agency (CRA) uses the PA from the previous year to calculate your new RRSP contribution room for the current year.

DISABILITY BENEFITS

The OMERS Plan has a disability waiver benefit and a disability pension.

Disability waiver

While on a disability waiver (also called “disability waiver of contributions”), you continue to accumulate credited service in the OMERS Plan as if you are still working based on your contributory earnings at the time your disability leave started. The OMERS Plan covers the contributions you and your employer would have made if you were not on a disability leave. Your contributory earnings at the time your leave started are used to calculate your pension and are increased by the lower of the annual increase in the Average Industrial Wage (AIW) or the CPI.

To qualify for a disability waiver, you must be totally disabled as defined by the OMERS Plan (see the Glossary for the definition).

The disability waiver begins **on the later of:**

- the first day of the fifth month after you become totally disabled; or
- the day after you cease to make regular contributions based on 100% of your contributory earnings prior to your leave.

The disability waiver benefit continues until **the earliest of** the following events occurs:

- you are no longer totally disabled;
- you begin receiving an OMERS disability or early retirement pension (the latter is only available if you terminate employment with your OMERS employer);
- you return to work with your OMERS employer or another employer or become self-employed (other than on an OMERS-approved rehabilitation program);
- you terminate employment with your OMERS employer prior to your early retirement birthday (55th birthday if you have a normal retirement age of 65 or 50th birthday if you have a normal retirement age of 60) and elect to transfer your benefit from the OMERS Plan; or
- you reach your normal retirement date.

Disability pension

If you become totally and permanently disabled as defined by the OMERS Plan (see the Glossary for a summary of the definition), you can begin a disability pension. Your disability pension is an unreduced pension calculated using the OMERS pension formula subject to a maximum (described below).

You can find the formula in the “How your pension grows” section on page 7.

The maximum OMERS disability pension that you can receive is 85% of your monthly contributory earnings that you last received from your OMERS employer.

If you are in receipt of Workplace Safety and Insurance Board (WSIB) benefits, this amount will also be counted towards the maximum disability pension you can receive. In this case, your combined monthly WSIB benefit and disability pension from the OMERS Plan cannot exceed 85% of the monthly contributory earnings that you last received from your employer.

If you exceed these limits, your OMERS disability pension will be reduced until you reach your normal retirement age. If you are in receipt of WSIB benefits and the WSIB benefit changes before your normal retirement date (for reasons other than inflation adjustments), you are required to contact OMERS with the updated amount.

The disability pension can begin **on the later of:**

- the first day of the fifth month after you become totally and permanently disabled; or
- the first of the month following the month you elect a disability pension, if you have been on a disability waiver.

If you are on a disability waiver immediately before beginning an OMERS disability pension, the waiver benefit ends when your pension begins, and you will no longer accrue credited service in the OMERS Plan.

The disability pension continues until **the earliest of** the following events occurs:

- you no longer meet the definition of totally and permanently disabled;
- you return to work with your OMERS employer, another employer, or become self-employed (other than on an OMERS-approved rehabilitation program);
- you begin an early retirement pension (this is only available if you terminate employment with your OMERS employer); or
- you reach your normal retirement date, and your disability pension becomes an OMERS normal retirement pension.

Members must provide all relevant medical and other information to be eligible to continue to receive disability benefits and advise OMERS of changes in their eligibility.

SHORTENED LIFE EXPECTANCY

If, because of an illness or other condition, your life expectancy is less than two years, you may be able to withdraw the CV of your pension plus any refund of contributions you may be eligible for in cash, less applicable tax withholding. Once you receive this shortened life expectancy benefit, no further benefit is payable from the OMERS Plan to you, your survivors, beneficiary or estate.

If you have an eligible spouse, they must provide their written declaration consenting to you withdrawing the funds using the required OMERS form.

BENEFIT CALCULATION CHANGES

Benefit calculation changes that took effect on January 1, 2013 affect you if your employment ends and you are not yet eligible for an early retirement pension. That is, if you have not reached your early retirement birthday (55th birthday if you have a normal retirement age of 65 or 50th birthday if you have a normal retirement age of 60), your benefit will be calculated in two parts:

- The benefit based on pre-2013 credited service includes pre-retirement indexing (inflation protection) and early retirement subsidies (including the OMERS bridge benefit).
- The benefit based on post-2012 credited service does not include pre-retirement indexing or early retirement subsidies.

These changes apply only if you leave your OMERS employer **before** your early retirement birthday.

Inflation protection (pre-retirement indexing)

Pre-retirement indexing is the inflation protection we apply to your benefit from the date you leave your OMERS employer to the date your pension begins.

The pre-2013 portion of your benefit will include inflation protection, whether you leave your benefit in the OMERS Plan or transfer the CV out. The post-2012 portion of your benefit will not include pre-retirement inflation protection.

Early retirement subsidies

Early retirement subsidies affect your benefit calculation for service earned after 2012 and the amount of the OMERS bridge benefit.

As of January 1, 2013, your benefit will be calculated in two portions: pre-2013 and post-2012.

The pre-2013 portion:

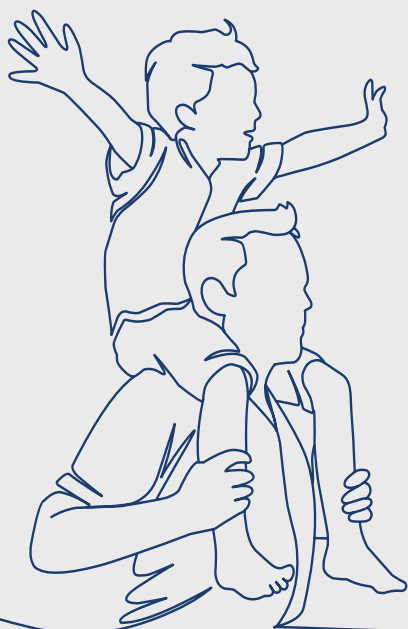
- You may eventually qualify for an unreduced pension for the pre-2013 portion, or, if not, your early retirement pension will be reduced by 5% per year that you're short of the 90 Factor or 85 Factor, 30 years of service or your normal retirement age (this is the "subsidized" reduction).
- The OMERS Plan bridge benefit will be included in the pre-2013 portion.

See the "Retirement" section on page 24 for more information.

The post-2012 portion:

- This portion no longer includes a possible unreduced early retirement pension. When you eventually begin your pension, the post-2012 portion will be reduced on an actuarial-equivalent basis (an "unsubsidized" reduction).
- If your normal retirement age is 65, the OMERS Plan bridge benefit will not be included in the post-2012 portion.
- If your normal retirement age is 60, a five-year portion of the bridge benefit (from age 60 to 65) will be included in the post-2012 portion.

Planning for Life Events



TAKING A LEAVE

Generally, if you take an unpaid or partially paid leave of absence that has been authorized by your OMERS employer, you may buy the service for the time you are away in order to have it treated as credited service. This includes both leaves protected by employment standards legislation (for example, pregnancy, parental, family medical and personal emergency leaves) and other leaves authorized by your employer. The cost of contributing towards or buying the service depends on the type of leave and how long ago the leave was taken.

For more information on purchasing a leave, including the cost and purchase deadline, visit members.omers.com or contact [Member Experience](#).

LEAVING YOUR OMERS EMPLOYER

Depending on your age and the amount of your pension, options when you leave your OMERS employer could include:

1. Keep your pension with OMERS

Keeping your pension with OMERS gives you a future stream of retirement income for life.

2. Combine your current and future OMERS pension

If you go to work for another OMERS employer, you may be able to combine your entire pension record under a single membership with your new OMERS employer.

3. Start your OMERS pension

On or after your early retirement birthday, you can elect to start receiving your OMERS pension.

4. Transfer your pension out of OMERS to another pension plan

If you go to work for a non-OMERS employer, you may be able to transfer your OMERS pension into your new employer's defined benefit registered pension plan (RPP).

5. Transfer the commuted value (CV) of your OMERS pension to a prescribed savings vehicle, such as a locked-in retirement account

You are eligible to transfer the CV of your pension if you leave an OMERS employer and you have not yet reached your early retirement birthday. This is a time-limited option. If you decide to transfer your CV, you have six months to do so. If you rejoin the OMERS Plan after making this transfer, you have to wait five years from when you transferred out your CV before you can buy back the associated service.

6. Cash refund (or a tax-deferred transfer to your RRSP) of the CV of your OMERS Plan benefit

If the annual pension you've earned is less than 4% of the YMPE, you may be eligible for a cash refund (or a tax-deferred transfer to your RRSP) of the CV of your OMERS Plan benefit.

Effective July 1, 2012, as permitted by law, OMERS elected to be excluded from providing "grow-in" provisions under the *Pension Benefits Act* for certain terminating members.

If you file a grievance/legal proceeding for termination of employment with the intention of being reinstated, the CV option (#5 above) is still available. If you are reinstated, you may repay the benefit to OMERS to re-establish your benefit.

Why your early retirement birthday matters

On or after your early retirement birthday (55th birthday for members with a normal retirement age of 65 or 50th birthday for members with a normal retirement age of 60), you are eligible for retirement options once you leave employment — you can retire and begin your OMERS pension — but the CV option (#5 above) is no longer available.

If you leave your OMERS employer before your early retirement birthday, the CV option is available for a limited period and, starting in 2013, certain benefit calculation changes will affect your benefit.

See the “Benefit calculation changes” section on page 19 for more details.

RETIREMENT

Normal retirement date

Your normal retirement date is the end of the month in which you turn:

- age 65 if your normal retirement age is 65 (NRA 65); or
- age 60 if your normal retirement age is 60 (NRA 60).

If you continue to work with an OMERS employer, you can continue to contribute to the OMERS Plan and earn credited service past your normal retirement date. However, the *Income Tax Act* requires that your OMERS pension must begin on December 1st of the year in which you reach age 71, whether or not you are still working, and you will no longer make contributions.

If you have terminated employment with an OMERS employer and have a pension you have not transferred from the OMERS Plan, you must start your monthly pension payments as of your normal retirement date.

OMERS pension payments begin the first of the month following the month you retire. For example, if your last day of employment with your OMERS employer is March 10th, the earliest date that you can start your OMERS pension is the first business day of April. Monthly pensions are not pro-rated.

Members are encouraged to reach out to their OMERS employer or Member Experience to get more information when they are thinking about retiring.

Early retirement

If you have terminated employment with your OMERS employer, you can elect to start receiving an early retirement pension on or after your early retirement birthday (55th birthday if you have a normal retirement age of 65 or 50th birthday if you have a normal retirement age of 60). If you elect to start receiving an early retirement pension from the OMERS Plan after you stop working with an OMERS employer, your early retirement date will be the last day of the month immediately prior to your pension starting. As noted above, all pension payments from the OMERS Plan start on the first business day of the month.

There are two types of early retirement pensions: unreduced and reduced.

Unreduced early retirement pension

An unreduced early retirement pension is calculated without a reduction.

You qualify for an unreduced early retirement pension if you have:

- **30 years** or more of service*; or
- the **"90 Factor"** if your normal retirement age is 65 or the **"85 Factor"** if your normal retirement age is 60.

The 90 Factor is: **your age + service* = 90** or more

The 85 Factor is: **your age + service* = 85** or more

* Eligible service + credited service

Reduced early retirement pension

If you don't qualify for an unreduced pension, you can still retire but your pension will be reduced by a 5% reduction factor as follows. The reduction factor is pro-rated for part years.

If your normal retirement age is 65, your OMERS pension is reduced by 5% per year multiplied by the least of:

- 65 minus your age when you retire;
- 90 Factor minus your current age-plus-service* factor; or
- 30 years minus your years of service*.

If your normal retirement age is 60, your OMERS pension is reduced by 5% per year multiplied by the least of:

- 60 minus your age when you retire;
- 85 Factor minus your current age-plus-service* factor; or
- 30 years minus your years of service*.

* Eligible service + credited service

Note that a different actuarial reduction applies on your post-2012 service if you left employment with your OMERS employer before your early retirement birthday.

If you are entitled to a bridge benefit, the entire bridge benefit stops when you turn 65.

RETURNING TO WORK AFTER RETIREMENT

If you go back to work for an OMERS employer in a position where you are eligible to enrol in the OMERS Plan, you will either be re-enrolled in the OMERS Plan or offered enrolment on a voluntary basis (depending on the position) unless:

- it is past November 30th of the year you turn age 71; or
- you specifically elect to continue receiving your pension and not re-enrol.

Subject to these exceptions, if you re-enrol in the OMERS Plan, your pension will stop and you will resume as a continuing member.

When you subsequently retire, all of your credited service and earnings are combined and your pension is recalculated.

For more information on life in retirement, including returning to work with an OMERS employer, visit members.omers.com or contact [Member Experience](#).

SEPARATION AND DIVORCE

In the event of a member's separation and/or divorce, OMERS must administer any valuation and/or division of OMERS Plan benefits in accordance with the Ontario *Pension Benefits Act* and applicable family law.

More information on the rules is available in the "[Separation and divorce](#)" section of members.omers.com or on the Ontario pension regulator's website at www.fsrdo.ca.

WHAT HAPPENS TO YOUR PENSION WHEN YOU DIE

OMERS Plan survivor benefits are paid according to a set order of entitlement that complies with the Ontario *Pension Benefits Act* and the OMERS Plan text. This order cannot be changed for any reason (including by a will).

See the [Glossary](#) for the applicable spousal definitions (pre-retirement spouse, retirement-date spouse and post-retirement-date spouse) and note the requirement that your spouse cannot be “living separate and apart” from you at the relevant date. The Glossary also includes the definition of eligible dependent children.

If you die before retirement, the order of entitlement to survivor benefits is as follows:

- 1. Spouse** – Your pre-retirement spouse can choose a survivor pension or cash refund/transfer.
- 2. Children** – If there is no pre-retirement spouse, a children’s pension (see below) will be paid to any eligible dependent child(ren) for as long as they are eligible.
- 3. Designated beneficiary** – If there is no pre-retirement spouse or eligible dependent child(ren), your designated beneficiary(ies) on file may be entitled to a cash refund.
- 4. Estate** – If there is no pre-retirement spouse, eligible dependent child(ren) or designated beneficiaries, a cash refund may be paid to your estate.

See the “Explanation of survivor benefits” section on page 32 for details on the survivor pension, children’s pension, cash refund and residual refund.

Additional refunds

In addition to the OMERS Plan survivor benefits, the following refunds may be payable in the event of death before retirement.

50% rule refund

If you leave your OMERS employer, start your OMERS pension or die before your pension starts, a test is applied to ensure that your contributions on or after January 1, 1987 do not exceed 50% of the CV of your pension over the same period. Any excess contributions will be refunded to you, your beneficiary or, if none, to your estate.

Special refund (pre-retirement death only)

If you do not have a spouse eligible for a survivor pension at the time of your death and the CV of your OMERS pension is greater than the amount needed to fund the survivor benefit for your eligible dependent child(ren) (if any), the difference is paid as an OMERS Plan special refund. It is paid to your living designated beneficiaries on file or, if none, to your estate.

If you die after retirement, the order of entitlement to survivor benefits is as follows:

- 1. Spouse** – Your retirement-date spouse (or post-retirement-date spouse if there is no eligible retirement-date spouse) will receive a survivor pension.
- 2. Children** – If there is no retirement-date spouse or post-retirement-date spouse, a children's pension will be paid to any eligible dependent child(ren) for as long as they are eligible.
- 3. Designated beneficiary** – If there is no retirement-date spouse, post-retirement-date spouse or eligible dependent child(ren), your designated beneficiary(ies) on file may be entitled to a residual refund.
- 4. Estate** – If there is no retirement-date spouse, post-retirement-date spouse, eligible dependent child(ren) or designated beneficiary(ies), any residual refund may be paid to your estate.

Explanation of survivor benefits

Survivor pension: An OMERS survivor pension equals:

- 66 2/3% of your lifetime pension*
- plus an additional 10% for each eligible dependent child, up to a total of 100% of the pension you earned.

The survivor pension is guaranteed for your eligible spouse's life (it does not stop if your spouse remarries) and is eligible for OMERS inflation protection increases (see "Inflation protection" section on page 14). It does not include the OMERS bridge benefit.

Children's pension: If there is no eligible spouse, an OMERS children's pension equals:

- 66 2/3% of your lifetime pension*; or
- the survivor's pension the spouse was receiving at their date of death (less any entitlement for eligible children).

A children's pension is divided equally among the eligible children and is paid to, or on behalf of, each child. When a child is no longer eligible, the benefit is redistributed among the remaining eligible children. It is eligible for OMERS inflation protection increases (see "Inflation protection" section on page 14), and it does not include the OMERS Plan bridge benefit.

* For death before retirement, this is 66 2/3% of the monthly lifetime pension you earned to the date of death or to the date you left your OMERS employer. For death after retirement, this is 66 2/3% of the monthly lifetime pension you were receiving at the date of death.

In the case of a surviving child being a minor, benefits of \$35,000 (on a gross basis) or less can be paid to the adult who has custody of the child; benefits over \$35,000 are subject to Guardianship of Property rules.

Cash refund (pre-retirement death only): The cash is paid in a lump sum and equals:

- the CV of the pension you earned since January 1, 1987; plus
- any contributions you made before 1987, plus interest to the date of your death.

Applicable taxes are deducted immediately. If payable to an eligible spouse, that individual can transfer the cash refund to a non-locked-in registered retirement savings arrangement.

Residual refund (post-retirement death only): The residual refund is the total of your OMERS Plan contributions plus interest, minus any pension paid to you and/or your survivors.

Note that after about five years of retirement, most members have received pension payments equal to their contributions plus interest, so there may not be a residual refund.

Naming a designated beneficiary

In the event a benefit is payable to a designated beneficiary (in accordance with the order of entitlement explained above), OMERS can only administer the benefit if the OMERS Plan member has validly named a beneficiary or beneficiaries. An executor, estate trustee, power of attorney for property or survivor cannot name or change your designated beneficiary(ies).

It is important to note that eligible spouses already have priority to survivor benefits. If an OMERS Plan member chooses to also name their spouse as a designated beneficiary, that designation does not change in the event of a separation or divorce.

It is very important that members review the information they have on file with OMERS from time to time (including their contact and beneficiary designation information) and keep it updated to reflect their communication and designation preferences.

You can update your beneficiary information quickly and easily online.
Visit myOMERS.com today to get started.

Retire with a Bigger OMERS Pension



If you belonged to another registered pension plan, you worked for an OMERS employer but were not in the OMERS Plan, you had an unpurchased leave or you transferred/cashed out your OMERS pension, you may be able to transfer or buy back that service and convert it to credited service in the OMERS Plan. This will increase your OMERS pension and may allow you to retire earlier without a reduction.

How do I increase my pension?

I worked for an OMERS employer but was not in the OMERS Plan or had an unpurchased leave.

I cashed out my previous pension.

BUY BACK

You may qualify to purchase that time and convert it to OMERS service.

Visit myOMERS.com and use the Buy-back Calculator to find out how much it would cost, or contact [Member Experience](#).

I was in a registered pension plan before OMERS.

I still have funds in my previous pension plan.

TRANSFER

You may qualify to transfer these funds for credited service in the OMERS Plan.

Contact [Member Experience](#) to find out if the pension can be transferred.

TRANSFERS

Subject to applicable legislation, OMERS can accept transfers into the OMERS Plan from most Canadian public- and private-sector registered pension plans, which may enable you to bring your pension from your previous employer into the OMERS Plan.

Contact Member Experience to find out if your pension can be transferred.

BUY-BACKS

Types of service you can buy back to increase your credited service in the OMERS Plan include:

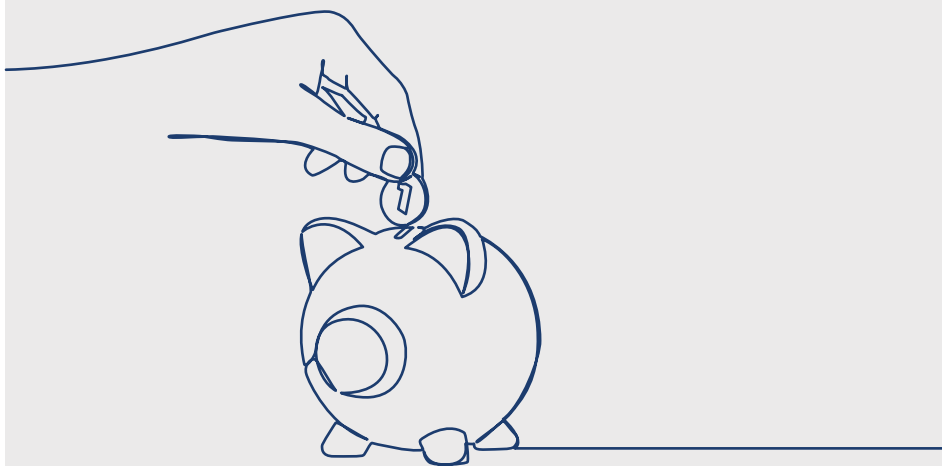
1. Refunded/transferred service after 1991 (including a waiting period) with another registered pension plan.
2. Leaves with an OMERS employer that you didn't purchase before the purchase deadline (for example, a pregnancy or parental leave that ended more than two years ago).
3. Eligible service with an OMERS employer – including a post-1991 waiting period to join the OMERS Plan, or previously refunded service.
4. A shortfall in transferred service – when the amount you transferred into the OMERS Plan from another registered pension plan didn't buy the same amount of credited service in the OMERS Plan.

If you rejoin the OMERS Plan after transferring the commuted value (CV) of your pension out of the OMERS Plan, you will have to wait five years from when you transferred your CV before you can buy back the associated service.

If you think you have service that you can buy back, contact [Member Experience](#) to see if it's purchasable.

04

Invest in the OMERS Fund with AVCs



OMERS offers Additional Voluntary Contributions (AVCs), which can increase your savings.

Similar to RRSPs in some ways, AVCs are administered as part of the OMERS Plan but separate from your OMERS defined benefit pension.

Funds in an AVC account are invested in the globally diverse OMERS Fund, earn the OMERS Fund net rate of return and are subject to an administrative fee. AVCs are also subject to the AVC Terms of Participation (available on members.omers.com).

There are two ways to contribute to an AVC account:

1. Transfer funds from a registered retirement savings vehicle, for example, an RRSP.
2. Automatic contributions by pre-authorized debit or payroll deduction through your employer*, from as low as \$40 a month or \$20 biweekly (active members only).

Everyone has their own unique retirement goals and AVCs could help you reach yours. You can learn more about AVCs at members.omers.com/additional-voluntary-contributions-avcs.

AVCs are part of the OMERS Plan and are subject to the conditions established by the OMERS Administration Corporation pursuant to Section 47 of the OMERS Plan. The OMERS Plan and such related conditions may be amended in the future in accordance with the OMERS Act, 2006 and the Pension Benefits Act (Ontario).

* Some OMERS employers offer payroll deductions in order to make contributions to the AVC program.

Glossary

50% Rule Refund:

When you leave your employer, you start your OMERS pension, or if you die before your pension starts, a test is applied to ensure that your contributions on or after January 1, 1987 do not exceed 50% of the commuted value (CV) of your pension over the same period. Any excess contributions will be refunded to you, your beneficiary, or your estate, as applicable.

AYMPE:

The five-year average of the year's maximum pensionable earnings (YMPE) determined at the time of a benefit calculation.

"Best five" earnings:

The annual average of the 60 consecutive months during which your contributory earnings were at their highest. It does not include any overtime pay or most lump-sum payments. It may, however, include earnings from a period of service that was transferred in from another registered pension plan.

If you have less than five years of credited service, we use your contributory earnings over your entire period of credited service to calculate your average earnings.

Bridge benefit:

If your pension starts before age 65, you may be entitled to the OMERS bridge benefit. It is a temporary benefit that helps "bridge" your OMERS pension until age 65, when your Canada Pension Plan (CPP) pension is expected to begin. For post-2012 service, eligibility for the bridge benefit depends on your age when you left employment with your OMERS employer.

Buy-back:

Buying back previous service that is eligible for a buy-back converts it to credited service in the OMERS Plan. The previous service could be service with an OMERS employer that currently doesn't count as credited service or refunded service with another pension plan.

Common-law spouse:

OMERS considers a common-law spouse to be a person who is not married to the member but living together with the member in a conjugal relationship:

- continuously, for a period of not less than three years; or
- in a relationship of some permanence, if they are the parents of a child as set out in section 4 of the *Children's Law Reform Act*.

To be eligible for spousal survivor benefits, a common-law spouse cannot be "living separate and apart" (see definition below) from the OMERS Plan member at the relevant time.

Commuted value (CV):

The commuted value is the estimated amount of money you would have to put aside today, to grow with tax-sheltered investment earnings, to provide you with a future benefit similar to the OMERS pension you've earned at the relevant time.

Continuous full-time:

You are a continuous full-time member if you are a permanent, full-time employee who is regularly scheduled to work over the full calendar year and works at least 32 hours a week.

Early retirement birthday:

Your early retirement birthday is the day you reach:

- age 55 if your normal retirement age is 65; or
- age 50 if your normal retirement age is 60.

Eligible dependent child:

OMERS considers an eligible child to be:

- a natural child;
- a legally adopted child; or
- a person whom you have demonstrated a settled intention to treat as a child of your family (except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody).

At the time of your death, the eligible child must be dependent on you for support and also must be:

- 18 years or younger in the year of your death;
- under age 25 and a full-time student; or
- totally disabled (see definition of “Totally disabled child”).

Legal spouse:

OMERS considers a legal spouse to be a person who is legally married to the member. To be eligible for spousal survivor benefits, a legal spouse cannot be “living separate and apart” (see definition below) from the OMERS Plan member at the relevant time.

Living separate and apart:

Whether two persons are “living separate and apart” is often complicated to assess. It is a question of both fact and law, and must be determined on a case-by-case basis. OMERS uses a number of factors to make this determination in accordance with applicable statutory and common law requirements.

In general, physical separation is usually, but not always, an indication that two persons are living separate and apart. However, physical separation is not always conclusive. There must also be a mutual or unilateral intention for two persons to live separate and apart and end the marriage or common-law

relationship. For example, a physical separation between two spouses caused by one of them living in a nursing home will not necessarily result in a determination that the spouses are living separate and apart, provided that both spouses intended the marriage or common-law relationship to continue despite the physical barrier.

Locked-in:

When your pension is “locked-in,” you must use it for future retirement income. You cannot cash it out, except in very specific cases allowed by applicable legislation and the OMERS Plan text. The pension benefits you accrue are immediately locked in when you join the OMERS Plan.

Non-full-time [referred to as other-than-continuous full-time (OTCFT) in the OMERS Plan text]:

Non-full-time members may include members who work less than a full-time work week or less than a full calendar year. They can be short-term, casual, temporary, seasonal, student, part-time, 10-month or contract employees.

Normal retirement age:

Most members in the OMERS Plan have a normal retirement age of 65. Many police and firefighters, including firefighters or police who become employed by a participating police or fire association, have a normal retirement age of 60 (NRA 60). Effective January 1, 2021, an employer will have the option to provide normal retirement age 60 (NRA 60) benefits to all or a class of paramedics. For unionized employees, NRA 60 benefits are subject to negotiation between employers and unions.

Normal retirement date:

Your normal retirement date is the end of the month in which you reach your normal retirement age.

OMERS Fund net rate of return:

The OMERS Fund rate of return less investment management expenses.

Post-retirement-date spouse:

If you enter into a spousal relationship after retirement, and there is no person who qualifies as your retirement-date spouse (see definition), OMERS considers the surviving legal spouse or common-law spouse at the date of your death to be the eligible spouse for the purpose of spousal survivor benefits, provided you were not “living separate and apart” (see definition) on the date of your death and the rights to survivor benefits have not been waived.

Pre-retirement spouse:

If you die before your pension start date, your pre-retirement spouse is your legal spouse or common-law spouse on the date of your death (before retirement) provided you were not “living separate and apart” (see definition) on the date of your death and rights to survivor benefits have not been waived.

Retirement compensation arrangement (RCA):

A portion of your OMERS pension with respect to service after 1991 may be paid by the OMERS RCA if your earnings exceed the amount that generates the maximum pension allowed by the *Income Tax Act* (ITA). This determination is made when you terminate employment or retire. The RCA is a trust arrangement separate from the Primary Plan, and is not governed by the *Pension Benefits Act* nor is it a Registered Pension Plan under the ITA.

Retirement-date spouse:

If you die after your pension has started, your retirement-date spouse is your legal spouse or common-law spouse on the date your first pension payment is due provided you were not “living separate and apart” (see definition) on that date and the rights to survivor benefits have not been waived.

Totally and permanently disabled:

You suffer from a physical or mental impairment which prevents you from engaging in any occupation or performing any work for compensation or profit for which you are qualified or may reasonably become qualified by education, training or experience and the disability is expected to last the rest of your lifetime.

Your disability cannot have resulted from a wilful self-inflicted injury, committing (or attempting to commit) an offence under the *Criminal Code* or working in an unlawful occupation.

Totally disabled:

You are incapable of doing your own job during the first 24 months of physical or mental disability; and after 24 months, you are incapable of doing any work for which you are qualified or may reasonably become qualified by education, training or experience.

Your disability cannot have resulted from a wilful self-inflicted injury, committing (or attempting to commit) an offence under the *Criminal Code* or working in an unlawful occupation.

Totally disabled child:

OMERS considers a totally disabled child to be someone:

- whose physical or mental disability occurred before age 21 or occurred before age 25 while a full-time student;
- whose condition prevents self-support or doing any work for compensation or profit (except for an OMERS-approved rehabilitation or workshop program); and
- who did not become disabled from a wilfully self-inflicted injury, committing (or attempting to commit) an offence under the *Criminal Code* or working in an unlawful occupation.

The child must be dependent on the member at the date of the member's death due to the condition.

Year's maximum pensionable earnings (YMPE):

The first earnings limit used to calculate contributions and pensions under the Canada Pension Plan (CPP). Also called the CPP earnings limit.



OMERS

900 – 100 Adelaide St W
Toronto, ON M5H 0E2 | Canada
T +1 416.369.2444 +1 800.387.0813
F +1 416.369.9704 +1 877.369.9704

omers.com

Schedule 4.27(c) – Benefit Plan Proceedings

NIL

Schedule 4.27(m) – Third Party Benefit Plan Members

NIL

Schedule 4.28 - Related Party Transactions

- The following balances owing by E.L.K. Solutions Inc. to E.L.K. Energy Inc. in respect of intercompany loans and services:

Financial Entity	Due to Related Parties (unaudited) *	Due from Related Parties (unaudited) *
ELK Energy	\$598,821.83	
ELK Solutions		\$598,821.00

- E.L.K Solutions and Town of Essex Infrastructure Services Agreement

Schedule 4.29 – Bank Accounts

[REDACTED]	
------------	--



Schedule 4.31(a) – Unfiled Tax Returns

NIL

Schedule 4.31(d) – Material Tax Deficiencies

NIL

Schedule 4.31(h) – Tax Elections

E.L.K. Energy Inc. (HST#: 86656 7787) - None

E.L.K. Solutions Inc. (HST# 86487 7519) - None

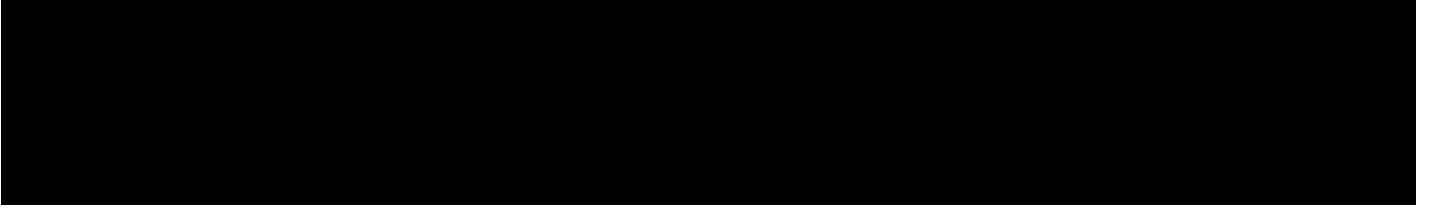
Schedule 4.31(j)- Undelivered Tax Returns

NIL

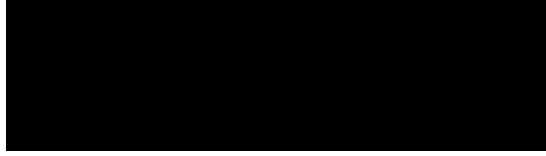
Schedule 4.31 (o) – Loss Restriction Event

NIL

Schedule 4.35 – Prudential Support



Schedule 4.36(a) – Water Heater Contract



Schedule 4.36(b) - Water Heater Rebates

NIL

Schedule 6.10 – Continuing Related Party Transactions

NIL

Schedule 8.1(f)

NIL

SCHEDULE “B”
CAPITAL PROGRAM BUDGET

See attached.



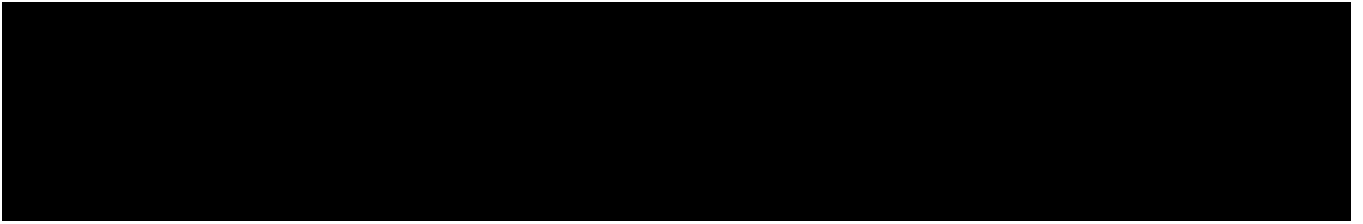
		Settlement Spend	Target Budget
Combined Capital		\$ 1,073,000	\$ 1,073,000
		\$ 462,000	\$ 1,800,841
		\$ (611,000)	\$ 727,841
System Access (Net)		\$ 420,000	\$ 681,100
Sudivision Contributed Capital		\$ (724,000)	\$ (1,066,100)
Subdivisions	<i>6 Subdivision - 350 Lots and 1 Condo</i>	\$ 1,144,000	\$ 1,523,000
Residential Connections		\$ -	\$ 74,200
Commercial Contributed Capital		\$ -	\$ (222,000)
Commercial Connections	<i>3 Commercial Projects</i>	\$ -	\$ 222,000
Municipal Driven Project	<i>Fox Lane - Kingsville</i>	\$ -	\$ 250,000
Municipal Contributed Capital	<i>50% of Labour and Equipment</i>	\$ -	\$ (100,000)
System Renewal		\$ -	\$ 481,682
Pole Renewal	<i>13 Pole Replacements</i>	\$ -	\$ 130,000
Transformer Renewal	<i>6 Transformer Replacements</i>	\$ -	\$ 77,436
Live Front Transformer	<i>Based on 5 transformer on Brien, Kim and Queen</i>	\$ -	\$ 174,246
Metering Renewal*		\$ -	\$ 100,000
General Plant		\$ -	\$ 107,229
Tools		\$ -	\$ 33,000
IT Equipment & Software*			\$ 10,600
GIS Implementation	<i>Amount Paid in 2022 to 2024: \$187,595.50</i>	\$ -	\$ 63,629
System Service		\$ 42,000	\$ 530,830
Faulted Circuit Indicators (FCIs)	<i>As per Smart Grid Plan</i>	\$ 42,000	\$ 42,000
Smart Grid Modification Essex		\$ -	\$ 100,000
Smart Grid Modification Harrow		\$ -	\$ 100,000
Second Supply Kingsville		\$ -	\$ 148,620
Second Supply Belle River		\$ -	\$ 140,211

The Capital Plan is presented below:

	2022 COS	2024 Budget	2024 Estimate	2025 Draft Budget
Capital	\$1,300,000	\$2,359,069	\$1,584,197	\$1,800,841
COS Amount	\$809,000	\$1,136,000	\$1,136,000	\$1,073,000
Increase from COS	\$491,000	\$1,223,069	\$448,197	\$727,841

SCHEDULE “C”

PURCHASE PRICE ALLOCATION



**Schedule “C”
Purchase Price Allocation**

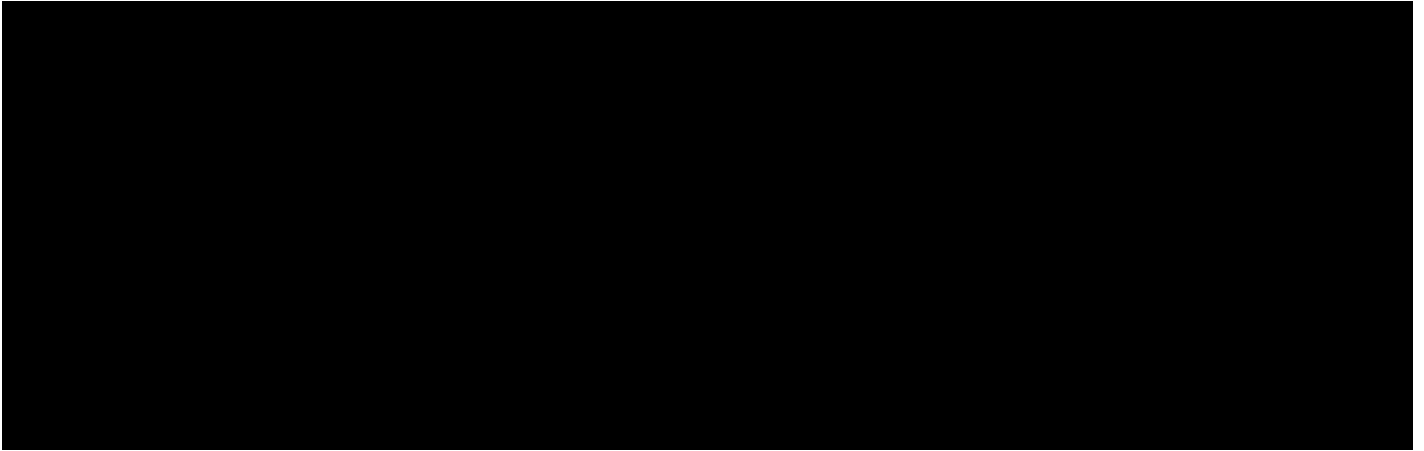


EXHIBIT “A”

FORM OF ESCROW AGREEMENT

See attached.

ESCROW AGREEMENT

THIS ESCROW AGREEMENT is made the [●] day of [●], 2025.

AMONG:

THE CORPORATION OF THE TOWN OF ESSEX, a corporation amalgamated under the laws of the Province of Ontario (the “**Seller**”)

– and –

WINDSOR CANADA UTILITIES LTD., a corporation incorporated under the laws of the Province of Ontario (the “**Buyer**”)

– and –

McTAGUE LAW FIRM LLP, a limited liability partnership operating in in Province of Ontario (the “**Escrow Agent**”)

RECITALS:

1. The Seller has agreed to sell all of the issued and outstanding shares in the capital of E.L.K. Energy Inc. and E.L.K. Solutions Inc. (collectively, the “**Corporations**”) to the Purchaser, upon and subject to the terms and conditions of a purchase and sale agreement dated as of the 12th day of March, 2025 between the Seller and the Buyer (the “**Purchase and Sale Agreement**”).
2. The Purchase and Sale Agreement provides that the Adjustment Escrow Amount (as hereinafter defined) and the Indemnity Escrow Amount (as hereinafter defined) shall be deposited in escrow with the Escrow Agent, to be held and distributed by the Escrow Agent on the terms and conditions set forth herein.
3. The Seller and the Buyer desire to place the Adjustment Escrow Amount and the Indemnity Escrow Amount in escrow with the Escrow Agent, with the Adjustment Escrow Amount and the Indemnity Escrow Amount to be released from such escrow pursuant to the terms of the Purchase and Sale Agreement and this Escrow Agreement.
4. The foregoing recitals are representations of fact by the Seller and the Buyer and not by the Escrow Agent.

IN CONSIDERATION of the premises and the mutual agreements in this Escrow Agreement, and of other consideration (the receipt and sufficiency of which are acknowledged by each party), the parties hereto agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Escrow Agreement:

“Adjustment Escrow Amount” means _____ (\$_____), initially deposited with the Escrow Agent hereunder, as such amount may increase with interest accrued thereon from time to time, if any, or decrease with disbursements permitted hereunder from time to time;

“Approved Bank” has the meaning set forth in Section 2.4(a);

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks in Windsor, Ontario are required or authorized by Law to be closed;

“Buyer” has the meaning specified in the preamble;

“Electronic Transmission” has the meaning set forth in Section 6.2(a)(ii);

“Escrow Agent” has the meaning specified in the preamble;

“Escrow Agreement” means this escrow agreement including the Recitals and any Schedules hereto, as it may be supplemented, amended or restated from time to time;

“Escrow Amount” means, collectively, the Adjustment Escrow Amount and the Indemnity Escrow Amount;

“Escrow Period Termination Date” means the date that is eighteen (18) months from the date hereof;

“Escrow Release Notice” means the joint written instructions of the Seller and the Buyer substantially in the form of Schedule A;

“Indemnity Escrow Amount” means _____ (\$_____), initially deposited with the Escrow Agent hereunder, as such amount may increase with interest accrued thereon from time to time, if any, or decrease with disbursements permitted hereunder from time to time;

“Interest” has the meaning set forth in Section 2.4(a);

“notice” has the meaning set forth in Section 6.2(a);

“Person” means an individual, a partnership, a corporation, a limited liability company, an unlimited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or a governmental authority or any department, agency or political subdivision thereof;

“Purchase and Sale Agreement” has the meaning set forth in paragraph 1 of the Recitals; and

“Seller” has the meaning specified in the preamble.

1.2 Definitions in Purchase and Sale Agreement

Capitalized terms used in this Escrow Agreement and not otherwise defined herein shall have the respective meanings assigned to them in the Purchase and Sale Agreement.

1.3 No Effect on Purchase and Sale Agreement

Nothing herein shall be deemed to limit, restrict, negate or otherwise amend the rights of the parties under the Purchase and Sale Agreement. As between the Buyer and the Seller, if there is a conflict or inconsistency between the terms of this Escrow Agreement and the terms of the Purchase and Sale Agreement, the terms of the Purchase and Sale Agreement shall govern to the extent of that conflict or inconsistency.

1.4 Schedules

Schedule A – Escrow Release Notice, Schedule B – Escrow Fees, Schedule C – Escrow Agent Wire Instructions and Schedule D – Approved Banks, are attached to and form an integral part of this Escrow Agreement.

ARTICLE 2 The Escrow Relationship

2.1 Appointment of Escrow Agent

The Buyer and the Seller hereby appoint the Escrow Agent as escrow agent and the Escrow Agent by its execution and delivery of this Escrow Agreement accepts its duties and responsibilities under this Escrow Agreement in respect of the Escrow Amount on the terms and conditions set forth herein.

2.2 Payment to Escrow Agent

The Buyer will contemporaneously with the execution and delivery hereof, pay the Adjustment Escrow Amount and the Indemnity Escrow Amount to the Escrow Agent, via wire transfer, to the Escrow Agent's account indicated on Schedule C attached hereto, to be held on and subject to the terms hereof. The Escrow Agent shall have no liability or responsibility in respect of the Escrow Amount until it is in fact received by the Escrow Agent. Upon receipt of the Escrow Amount, the Escrow Agent shall, in a separate email receipt, acknowledge receipt of the Escrow Amount to the Buyer and the Seller concurrently.

2.3 Escrow Relationship

- (a) The Escrow Agent shall hold the Escrow Amount in escrow and in trust for the benefit of the Seller and the Buyer in accordance with their respective rights, interests and obligations under the Purchase and Sale Agreement and this Escrow Agreement.
- (b) Each of the Adjustment Escrow Amount and the Indemnity Escrow Amount shall at all times be held in an internally segregated trust account of the Escrow Agent, on behalf of the Seller and the Buyer, shall not be comingled and shall not form part of the Escrow Agent's own assets. The Escrow Agent shall keep such books and records necessary to provide a confirmation from time to time of each of the Adjustment Escrow Amount and the Indemnity Escrow Amount. The Escrow Agent does not have any interest in the Escrow Amount, but is serving as escrow agent and trustee in respect of the Escrow Amount.

- (c) Except as expressly provided in this Escrow Agreement, the Escrow Amount shall not, in any manner, directly or indirectly, be assigned, encumbered, hypothecated, pledged, alienated, released from escrow or transferred within escrow (or otherwise dealt with in any manner which has the economic effect of any of the foregoing acts, on a current or prospective basis).

2.4 Interest on Escrow Amount

- (a) On the date hereof, the Escrow Agent shall deposit the: (i) Adjustment Escrow Amount in an internally segregated interest-bearing account with one of the Canadian chartered banks set out on Schedule D (each, an “**Approved Bank**”); and (ii) Indemnity Escrow Amount in an internally segregated interest-bearing account with one of the Approved Banks, whereby each such account will each earn a rate of interest then current on similar deposits (“**Interest**”). The Escrow Agent shall not invest the Escrow Amount, shall not be responsible for any failure to achieve any particular rate of return or yield and will not be held liable for any losses incurred as a result of depositing such funds as aforesaid. Without the prior written consent of the Buyer and the Seller, the Escrow Agent shall not deposit or transfer any of the Escrow Amount into any bank that is not one of the Approved Banks.
- (b) Upon the release of the Adjustment Escrow Amount to either the Seller or the Buyer in accordance with the terms hereof, a pro rata portion of the Interest earned thereon prior to the date of such release, if any, shall be released from escrow and paid to the recipient of the underlying portion of the Adjustment Escrow Amount on which the Interest was earned. For tax reporting purposes, the Interest earned from the deposit of the Adjustment Escrow Amount in any tax year shall, to the extent such Interest is distributed by the Escrow Agent to any Person pursuant to the terms of this Escrow Agreement during such tax year, be allocated to such Person and otherwise to the Seller.
- (c) Upon the release of any portion of the Indemnity Escrow Amount to either the Seller or the Buyer in accordance with the terms hereof, the Interest earned thereon prior to the date of such release shall be released from escrow and paid to the recipient of the underlying portion of the Indemnity Escrow Amount on which the Interest was earned. For tax reporting purposes, the Interest earned from the deposit of the Indemnity Escrow Amount in any tax year shall, to the extent such Interest is distributed by the Escrow Agent to any Person pursuant to the terms of this Escrow Agreement during such tax year, be allocated to such Person and otherwise to the Seller.
- (d) Following tax instructions and approval from the Seller and the Buyer, the Escrow Agent shall complete or cause to be completed the required Canadian federal and provincial tax filings and slip issuances relating to the Interest accrued up to and including the tax year the released amounts were released.
- (e) The Seller represents and warrants to the Escrow Agent that it is not a non-resident of Canada as defined in the *Income Tax Act* (Canada) or any applicable provincial taxation statute.
- (f) The Buyer represents and warrants to the Escrow Agent that it is not a non-resident of Canada but is controlled by a non-resident of Canada as defined in the *Income Tax Act* (Canada) or any applicable provincial taxation statute.

2.5 Term

The term of this Escrow Agreement shall commence on the date hereof and shall continue until the date that the Escrow Agent has released all of the Escrow Amount in accordance with this Escrow Agreement.

ARTICLE 3 Release of Escrow Amounts

3.1 Release of Adjustment Escrow Amount

The Escrow Agent shall disburse the Adjustment Escrow Amount only in accordance with an Escrow Release Notice signed by each of the Seller and the Buyer, which Escrow Release Notice shall reflect the payment(s) determined in accordance with the Purchase and Sale Agreement. The Escrow Agent shall have no responsibility to determine if any payment specified in the Escrow Release Notice is in accordance with the provisions of the Purchase and Sale Agreement. No later than three (3) Business Days after receipt of an Escrow Release Notice, the Escrow Agent shall pay to the applicable party or parties from the Adjustment Escrow Amount the amount(s) set out therein by wire transfer of immediately available funds. Prior to any release and as directed by the Seller or the Buyer, as applicable, the Escrow Agent shall deduct from any payment made pursuant hereto any withholdings, taxes, assessments or other charges imposed on such payment by any Governmental Authority which the Escrow Agent is instructed or required to withhold or remit under applicable Law and the Escrow Agent shall remit and report any such amount to such Governmental Authority. Within three (3) Business Days following receipt of a final and binding determination by a court of competent jurisdiction regarding a dispute with respect to the disposition of any portion of the Adjustment Escrow Amount, the Escrow Agent shall pay from the Adjustment Escrow Amount, as specified in such binding determination, together with any Interest which has accrued with respect to the portion of the Adjustment Escrow Amount being distributed, to the party(ies) specified in such determination, the amount specified in such final and binding determination by wire transfer of immediately available funds.

3.2 Release of Indemnity Escrow Amount

The Escrow Agent shall disburse the Indemnity Escrow Amount (or a portion thereof) only in accordance with an Escrow Release Notice signed by each of the Seller and the Buyer, which Escrow Release Notice shall reflect the payment determined in accordance with the Purchase and Sale Agreement. The Escrow Agent shall have no responsibility to determine if any payment specified in an Escrow Release Notice is in accordance with the provisions of the Purchase and Sale Agreement. No later than three (3) Business Days after receipt of an Escrow Release Notice, the Escrow Agent shall pay to the applicable party or parties from the Indemnity Escrow Amount the amount(s) set out therein by wire transfer of immediately available funds. Prior to any release and as directed by the Seller or the Buyer, as applicable, the Escrow Agent shall deduct from any payment made pursuant hereto any withholdings, taxes, assessments or other charges imposed on such payment by any Governmental Authority which the Escrow Agent is instructed or required to withhold or remit under applicable Law and the Escrow Agent shall remit and report any such amount to such Governmental Authority. Within three (3) Business Days following receipt of a final and binding determination by a court of competent jurisdiction regarding a dispute with respect to the disposition of any portion of the Indemnity Escrow Amount, the Escrow Agent shall pay from the Indemnity Escrow Amount, as specified in such binding determination, together with any Interest which has accrued with respect to the portion of the Indemnity Escrow Amount being distributed, to the party(ies) specified in such determination, the amount specified in such final and binding determination by wire transfer of immediately available funds.

ARTICLE 4

Liability of Escrow Agent

4.1 Reliance of Escrow Agent on Documents

The Escrow Agent may assume that all documents on which it must rely in order to carry out its obligations under this Escrow Agreement are valid and properly authorized and executed. The Escrow Agent does not need to question the authenticity of any such document or any signature thereon, nor inquire whether the person who signed, issued or authenticated any such document had authority to do so. The Escrow Agent may rely upon any document that it believes in good faith to be genuine, sufficient and properly presented in accordance with the provisions of this Escrow Agreement, regardless of whether such document is in original or electronic form. The Escrow Agent has no duty to determine whether any provision of any agreement between the Seller and the Buyer has been performed. The Escrow Agent shall not be liable for any amounts payable hereunder in excess of the Escrow Amount.

4.2 Indemnity in Favour of the Escrow Agent

Each of the Seller and the Buyer shall at all times jointly and severally indemnify and save harmless the Escrow Agent and its partners, directors, officers, agents, and employees and former partners, directors, officers, agents and employees (collectively, the “**Indemnitees**”) from and against all claims whatsoever (including actions, assessments, costs, charges, claims, damages, debts, demands, disbursements, expenses, fines, interest, judgements, levies, liabilities, losses, penalties, proceedings, suits, and costs of litigation and reasonable legal fees (on a solicitor and his own client basis) in connection therewith) brought, commenced or prosecuted against it or them or any of them for or in respect of any act, deed, matter or thing whatsoever made, done, acquiesced in or omitted in or about or in relation to the execution of the Escrow Agent’s duties as Escrow Agent under this Escrow Agreement (“**Indemnification Triggers**”); provided that the indemnity provided for in this Section 4.2 shall not apply in respect of any such claims that are the result of the gross negligence, bad faith, wilful misconduct or fraud of the Escrow Agent and/or any Indemnitees. Notwithstanding anything to the contrary herein, solely as between the Seller and Buyer, and without in any way limiting the joint and several obligations of the Seller and the Buyer to the Escrow Agent, the Seller shall be solely responsible for the indemnification obligations resulting directly from Indemnification Triggers that are in relation to or arising out of any breach by the Seller or any of its affiliates, partners, directors, officers, agents, and employees and former partners, directors, officers, agents and employees and the Buyer shall be solely responsible for the indemnification obligations resulting directly from Indemnification Triggers that are in relation to or arising out of any breach by the Buyer or any of its affiliates, partners, directors, officers, agents, and employees and former partners, directors, officers, agents and employees. Except for any claims that are the result of the gross negligence, bad faith, wilful misconduct or fraud of the Escrow Agent and/or any Indemnitees, the Escrow Agent shall be liable for claims or damages only to an aggregate maximum amount equal to the Escrow Amount. This indemnification will survive any termination of this Escrow Agreement and any discharge, resignation or removal of the Escrow Agent.

4.3 Attachment

The Escrow Agent is authorized, in its sole discretion, to comply with all final and legally binding writs, orders or decrees entered or issued, which:

- (a) attach, garnish or levy upon any part of the Escrow Amount;
- (b) stay or enjoin the delivery of any part of the Escrow Amount; or

- (c) affect any part of the Escrow Amount in any way.

The Escrow Agent shall not be liable to either of the Seller or the Buyer because it obeys or complies with any such writ, order or decree, even if such writ, order or decree is subsequently reversed, modified, annulled, set aside or vacated.

4.4 Liability of Escrow Agent

The Escrow Agent shall not be liable for any action taken or omitted to be taken by it in good faith and in the exercise of its own best judgment, and any act done or omitted by it pursuant to the advice of *bona fide* and reputable counsel shall be conclusive evidence of such good faith. Once the Escrow Agent has paid out the Escrow Amount in its entirety in accordance with the provisions of this Escrow Agreement, the Escrow Agent shall be released and discharged from all obligations hereunder with respect to the Escrow Amount and shall have no further responsibility towards the Seller or the Buyer with respect to the Escrow Amount (for certainty, other than in respect of claims that are the result of the gross negligence, bad faith, wilful misconduct or fraud of the Escrow Agent and/or any Indemnitees). In the event of a disagreement arising as to the interpretation or meaning of any provision of this Escrow Agreement between the Buyer and the Seller, the Escrow Agent will be entitled, at its option, to refuse to comply with any and all demands whatsoever until the dispute is settled by either written agreement among the parties hereto, by arbitration or by a court of competent jurisdiction, and may, at its option, pay the Escrow Amount to an Ontario court of competent jurisdiction.

4.5 Opinion of Counsel

The Escrow Agent may consult with counsel or other experts, advisors or agents who are independent of both Buyer and Seller and whose advice the Escrow Agent in its reasonable discretion considers necessary to determine and discharge its duties under this Escrow Agreement and all costs related thereto shall be paid equally by the Buyer, on the one hand, and the Seller, on the other. Any opinion of counsel shall be complete authorization and protection for the Escrow Agent in respect of any action taken or omitted, save for actions or omissions by the Escrow Agent constituting gross negligence, willful misconduct, bad faith or fraud.

4.6 No Implied Duties of Escrow Agent

This Escrow Agreement sets forth all of the duties of the Escrow Agent in respect of the Escrow Amount. The Escrow Agent shall have no duties or obligations other than those set forth in this Escrow Agreement. Except to the extent that definitions from the Purchase and Sale Agreement are incorporated herein by reference, the Escrow Agent shall not refer to, and shall not be bound by, the provisions of any agreement other than the terms of this Escrow Agreement and no implied duties or obligations of the Escrow Agent may be read into this Escrow Agreement. The Escrow Agent shall give the Escrow Amount the same degree of care it gives its own similar property. The Escrow Agent's duty to deliver the Escrow Amount shall be fully performed by delivering the monies in the Escrow Amount it has actually received (including any interest accrued thereon), uninsured, as specified in this Escrow Agreement. The Escrow Agent accepts its duties and responsibilities under this Escrow Agreement and with respect to the Escrow Amount and any evidence related to the Escrow Amount, solely as custodian, bailee and agent.

4.7 Fees and Expenses of Escrow Agent

The Escrow Agent shall not charge any fees and/or expenses for its services hereunder other than for reimbursement of its reasonable and documented out-of-pocket expenses incurred directly in carrying out its duties hereunder, including any reasonable and documented out-

of-pocket expenses incurred as a result of the Escrow Agent becoming involved in any litigation, arbitration or court proceeding in its capacity as Escrow Agent hereunder, but excluding pursuant to Section 5.1. The Buyer, on the one hand, and the Seller, on the other hand, shall, as to 50% each, be liable for the reasonable and documented out-of-pocket expenses of the Escrow Agent. Invoices will be issued to the Seller and the Buyer representing their portion of such expenses. In the event of non-payment of any such expenses after sixty (60) days, the Escrow Agent shall have the right, with not less than three (3) Business Days written notice to the Seller and the Buyer, to reimburse itself out of any Escrow Amount then in its possession for any such fees and expenses.

ARTICLE 5

Change in the Escrow Agent

5.1 Resignation of the Escrow Agent

The Escrow Agent may resign and be discharged from all of its obligations in this Escrow Agreement by giving the Seller and the Buyer ninety (90) days' prior written notice or such shorter notice as they may accept. If the Escrow Agent resigns, a new escrow agent shall be appointed by written agreement of the Seller and the Buyer, acting in good faith. Failing such agreement, the Buyer shall have the right to appoint an escrow agent. If such replacement escrow agent has not been appointed by the expiry of such ninety (90) day notice period, the Escrow Agent shall be entitled to apply under Ontario Law for leave to deliver the Escrow Amount and all related records and documents into the custody of a court of competent jurisdiction or of an officer thereof and the resignation of the Escrow Agent shall become effective upon such delivery. All costs and expenses incurred by the Escrow Agent in connection with its resignation under this Section 5.1 shall be borne solely by the Escrow Agent.

5.2 Replacement of the Escrow Agent

The Seller and the Buyer may at any time, on thirty (30) days' prior written notice to the Escrow Agent, replace the Escrow Agent by delivering to the Escrow Agent a notice signed by them appointing a new escrow agent as the Escrow Agent hereunder.

5.3 Obligations of the Escrow Agent When Changed

Each new escrow agent shall be vested with the same powers, rights, duties and responsibilities as if it had been originally named herein as Escrow Agent, without any further assurance, conveyance, act or deed. The Escrow Agent will deliver the Escrow Amount to the new escrow agent as soon as it has been advised of the appointment of such new escrow agent; provided, however, that the Escrow Agent shall not release any escrowed property hereunder until all of its reasonable and documented out-of-pocket expenses to which it is properly entitled hereunder have been paid as contemplated in this Escrow Agreement.

5.4 Assignment by Escrow Agent

Any entity resulting from the merger, amalgamation or continuation of the Escrow Agent or succeeding to all or substantially all of its business (by sale of its business or otherwise) shall thereupon automatically become the Escrow Agent hereunder without further act or formality. The Escrow Agent shall give the Buyer and the Seller ninety (90) days prior written notice of any such event.

ARTICLE 6

General

6.1 Irrevocable Agreement

This Escrow Agreement shall not be revoked, rescinded or modified as to any of its terms and conditions, except by consent in writing signed by the Seller and the Buyer and assented to in writing by the Escrow Agent.

6.2 Notices

- (a) **Method of Delivery.** Any notice, demand or other communication (in this Section, a “**notice**”) required or permitted to be given or made hereunder shall be in writing and shall be sufficiently given or made if:
- (i) delivered in person during normal business hours on a Business Day and left with a receptionist, a responsible employee of the relevant party or other responsible individual at the applicable address set forth below; or
 - (ii) sent by email (“**Electronic Transmission**”), during normal business hours on a Business Day;

in the case of a notice to the Seller:

The Corporation of the Town of Essex
33 Talbot Street South
Essex, Ontario
N8M 1A8

Attention: Joe Malandruccolo, Director of Legal & Legislative
Service/Clerk
Email: jmalandruccolo@essex.ca

with a copy (which copy shall not constitute notice) to:

McTague Law Firm LLP
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

Attention: Brian Chillman
Email: bchillman@mctague.law

and in the case of a notice to the Buyer, addressed to:

c/o Enwin Utilities Ltd.
4545 Rhodes Drive
P.O. Box 1625, Station A
Windsor, Ontario
N8W 5T1

Attention: Corporate Secretary
Email: secretary@enwin.com

with a copy (which copy shall not constitute notice) to:

Torys LLP
79 Wellington St. W., 30th Floor
Box 270, TD South Tower
Toronto, Ontario

Attention: Huw Evans
Email: hevans@torys.com

and in the case of a notice to the Escrow Agent, addressed to it at:

McTague Law Firm LLP
455 Pelissier Street
Windsor, Ontario
N9A 6Z9

Attention: Brian Chillman
Email: bchillman@mctague.law

- (b) **Deemed Delivery.** Each notice sent in accordance with this Section shall be deemed to have been received:
- (i) in the case of personal delivery, if delivered before 5:00 p.m., on the day it was delivered, and otherwise on the first Business Day thereafter; or
 - (ii) in the case of Electronic Transmission, on the same day that it was sent if sent on a Business Day before 5:00 p.m. (recipient's time) on such day, and otherwise on the first Business Day thereafter.
- (c) Any party hereto may change its address for notice by written notice delivered to the other parties hereto in accordance with this Section 6.2.

6.3 Further Assurances

Each party hereto shall do such acts and shall execute such further documents, conveyances, deeds, assignments, transfers and the like, and will cause the doing of such acts and will cause the execution of such further documents as are within its power as any other party may in

writing at any time and from time to time reasonably request be done and or executed, in order to give full effect to the provisions of this Escrow Agreement.

6.4 Headings etc.

- (a) The division of this Escrow Agreement into articles, sections, subsections and schedules and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Escrow Agreement. The article, section, subsection and schedule headings in this Escrow Agreement are not intended to be full or precise descriptions of the text to which they refer and are not to be considered part of this Escrow Agreement. All uses of the words “hereto”, “herein,” “hereof,” “hereby” and “hereunder” and similar expressions refer to this Escrow Agreement as a whole and not to any particular section or portion of it. References to an Article, Section, Subsection or Schedule refer to the applicable article, section, subsection or schedule of this Escrow Agreement.
- (b) In this Escrow Agreement, words in the singular include the plural and vice-versa and words in one gender include all genders. Whenever the words “include”, “includes” or “including” are used in this Escrow Agreement, they shall be deemed to be followed by the words “without limitation”, unless the context otherwise requires. The language used in this Escrow Agreement is the language chosen by the parties hereto to express their mutual intent, and no rule of *contra preferentum* or strict construction shall be applied against any party.

6.5 Time

Time is of the essence of each provision of this Escrow Agreement.

6.6 Entire Agreement

This Escrow Agreement, together with the Purchase and Sale Agreement, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior negotiations, discussions, understandings, undertakings, statements, arrangements, promises, representations and agreements, both written or oral, between the parties hereto.

6.7 Waiver of Rights

Any waiver of, or consent to depart from, the requirements of any provision of this Escrow Agreement shall be effective only if it is in writing and signed by the party giving it (namely, the Buyer and the Seller, as applicable), and only in the specific instance and for the specific purpose for which it has been given. For greater certainty, no waiver of any provision of this Escrow Agreement shall be deemed to constitute a waiver of any other provision (whether or not similar). No failure on the part of any party to exercise, and no delay in exercising, any right under this Escrow Agreement shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

6.8 Performance on Holidays

If any action is required to be taken pursuant to this Escrow Agreement on or by a specified date which is not a Business Day, then such action shall be valid if taken on or by the next succeeding Business Day.

6.9 Calculation of Time

In this Escrow Agreement, a period of days shall be deemed to begin on the first day after the event which began the period and to end at 5:00 p.m. (Toronto, Ontario time) on the last day of the period. If, however, the last day of the period does not fall on a Business Day, the period shall terminate at 5:00 p.m. (Toronto, Ontario time) on the next Business Day.

6.10 Governing Law

This Escrow Agreement shall be governed by, and construed, interpreted and enforced in accordance with, the Laws of the Province of Ontario and the federal Laws of Canada applicable therein. Each party irrevocably submits and attorns to the exclusive jurisdiction of the courts of the Province of Ontario in the City of Windsor with respect to any matter arising under this Escrow Agreement or related to this Escrow Agreement and waives objection to the venue of any matter in such court or that such court provides an inconvenient forum.

6.11 Successors and Assigns

This Escrow Agreement shall enure to the benefit of and be binding upon each of the parties hereto and their respective heirs, executors, legal personal representatives, administrators, successors (including any successor by reason of amalgamation or statutory arrangement of any party) and permitted assigns. Neither the Buyer nor the Seller may assign its rights hereunder without the prior written consent of the other party (excluding the Escrow Agent), except that the Buyer may assign this Escrow Agreement in conjunction with a permitted assignment of the Purchase and Sale Agreement.

6.12 Counterparts

This Escrow Agreement may be executed in any number of counterparts. Each executed counterpart shall be deemed to be an original. All executed counterparts taken together shall constitute one agreement.

6.13 Electronic Execution

To evidence the fact that it has executed this Escrow Agreement, a party hereto may send a copy of its executed counterpart to all other parties hereto by Electronic Transmission or by email and if sent by email, in Portable Document File (PDF) format. In such event, such party shall forthwith deliver to the other party the counterpart of this Escrow Agreement executed by such party.

6.14 Currency

All statements of or reference to dollar amounts in this Escrow Agreement are to Canadian dollars.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

TO WITNESS their agreement, the Seller, the Buyer and the Escrow Agent have duly executed this Escrow Agreement on the date first above written.

SELLER

THE CORPORATION OF THE TOWN OF ESSEX

By:

Name:

Title:

By:

Name:

Title:

BUYER

WINDSOR CANADA UTILITIES LTD.

By:

Name:

Title:

By:

Name:

Title:

-

ESCROW AGENT

MCTAGUE LAW FIRM LLP

By:

Name:

Title:

SCHEDULE A

ESCROW RELEASE NOTICE

TO: McTague Law Firm LLP, Attention: Brian L. Chillman, Partner, email: bchillman@mctague.law

RE: Escrow Agreement made as of [●], 2025 among The Corporation of the Town of Essex (the “**Seller**”), Windsor Canada Utilities Ltd. (the “**Buyer**”), and McTague Law Firm LLP as Escrow Agent (the “**Escrow Agreement**”)

Unless otherwise defined herein, all capitalized terms used in this Escrow Release Notice shall have the meaning ascribed to them in the Escrow Agreement.

The Buyer and the Seller, hereby irrevocably instruct you, forthwith upon receipt of this notice, to release \$[●] <plus the pro rata interest, if any> to the <insert Seller or Purchaser> of the < Adjustment Escrow Amount or Indemnity Escrow Amount> as follows:

\$[●] <plus the pro rata interest, if any>, to [●], <insert address associated with beneficiary account> at **[insert wire transfer instructions (include bank name, bank code and transit number, SWIFT Code, and account number)]**,

This shall be your good, sufficient and irrevocable authority for so doing.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

-

DATED this _____ day of _____, _____.

SELLER

THE CORPORATION OF THE TOWN OF ESSEX

By:

Name:

Title:

By:

Name:

Title:

BUYER

WINDSOR CANADA UTILITIES LTD.

By:

Name:

Title:

By:

Name:

Title:

SCHEDULE B

ESCROW FEES

All reasonable and documented out-of-pocket expenses, including bank fees, long distance calls, postage, courier, stationery and other reasonable expenses as incurred.

EXHIBIT “B”

FORM OF GOVERNANCE REPRESENTATION AGREEMENT

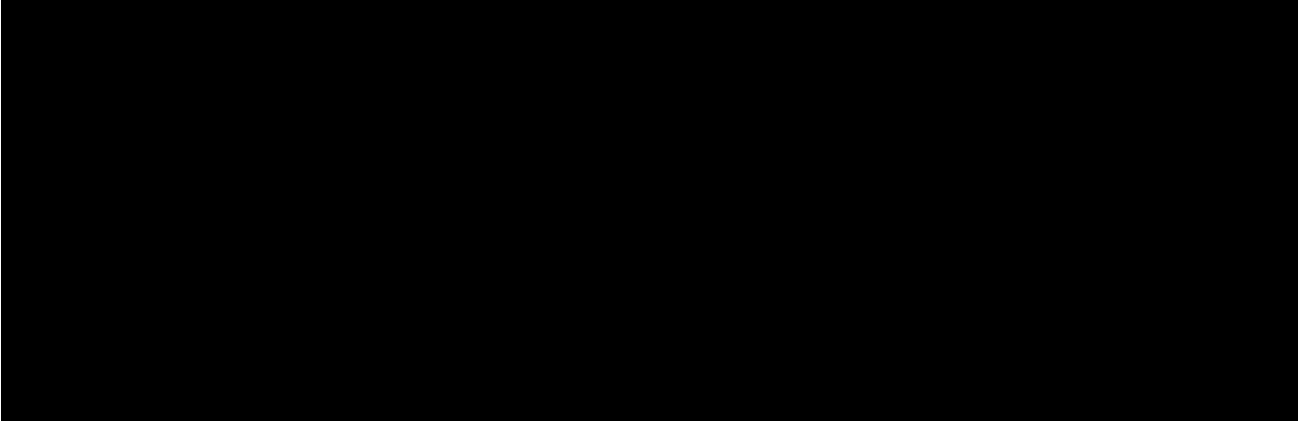


EXHIBIT “C”

SAMPLE STATEMENT

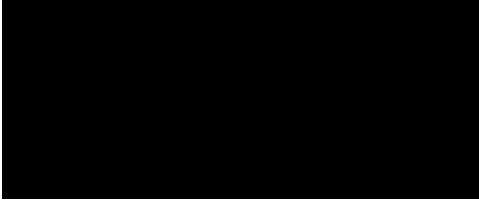




EXHIBIT “D”

FORM OF DIRECTOR AND OFFICER RELEASES

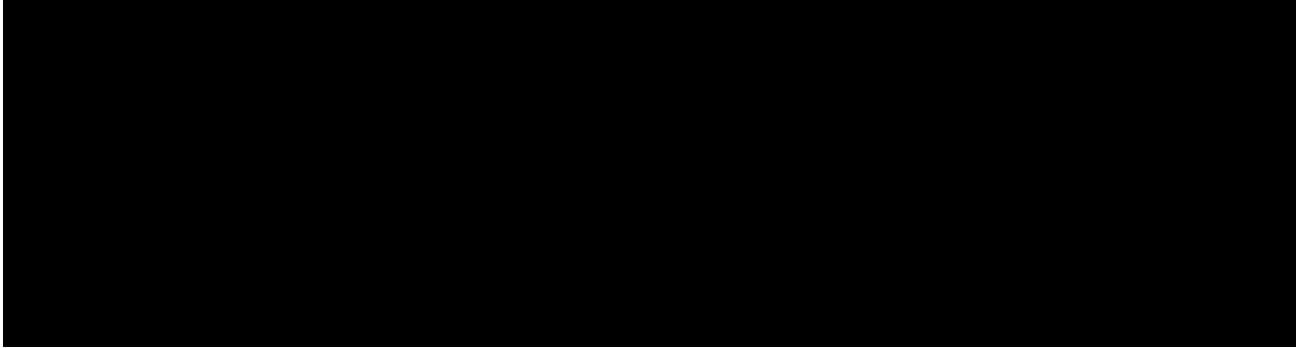


EXHIBIT “E”

FORM OF SHAREHOLDER RELEASE

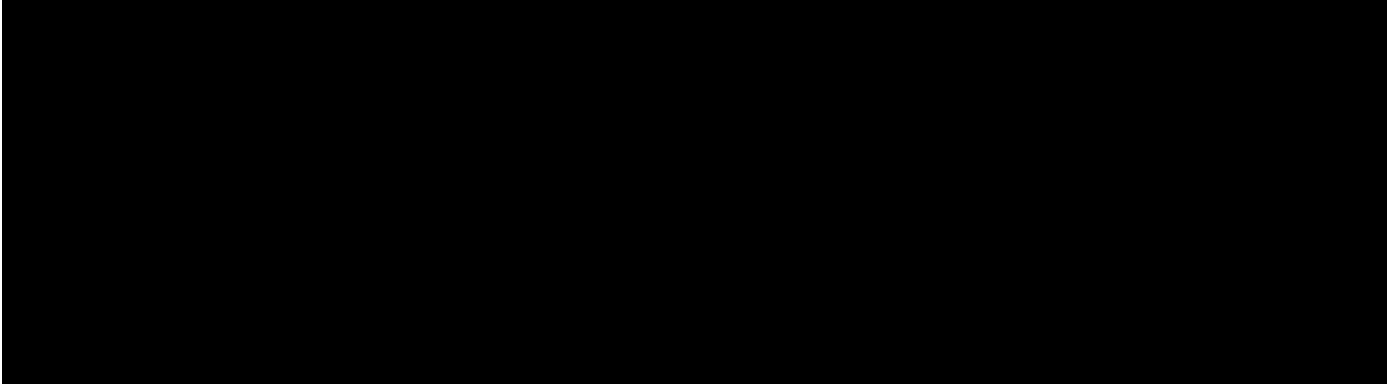


EXHIBIT “F”

SELLER CLOSING CERTIFICATE

See attached.

FORM OF SELLER OFFICER'S CERTIFICATE

TO: WINDSOR CANADA UTILITIES LTD. (the “Buyer”)

RE: Purchase and sale agreement dated as of March 12, 2025 between WINDSOR CANADA UTILITIES LTD. and THE CORPORATION OF THE TOWN OF ESSEX (the “PSA”)

DATE: ■

All capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the PSA. This certificate is being delivered pursuant to Section 7.2(g) of the PSA.

I [Name], [Title] of **THE CORPORATION OF THE TOWN OF ESSEX**, a corporation formed under the laws of the Province of Ontario (the “Seller”), certify for and on behalf of the Seller, and not in my personal capacity and without personal liability, that:

1. the representations and warranties of Seller made pursuant to the PSA (i) were true and accurate in all respects on the date of the PSA and (ii) are true and accurate in all respects on the date hereof;
2. the covenants and obligations contained in the PSA to be performed by the Seller on or before the date hereof have been performed in all material respects; and
3. since the date of the PSA, there has been no Material Adverse Effect.

[signature page follows]

DATED as of the date first written above.

By: _____
Name:
Title:

EXHIBIT “G”

BUYER CLOSING CERTIFICATE

See attached.

FORM OF BUYER OFFICER'S CERTIFICATE

TO: THE CORPORATION OF THE TOWN OF ESSEX (the “Seller”)

RE: Purchase and sale agreement dated as of March 12, 2025 between WINDSOR CANADA UTILITIES LTD. and THE CORPORATION OF THE TOWN OF ESSEX (the “PSA”)

DATE: ■

All capitalized terms used but not otherwise defined herein have the meanings ascribed thereto in the PSA. This certificate is being delivered pursuant to Section 7.3(d) of the PSA.

I [Name], [Title] of WINDSOR CANADA UTILITIES LTD., a corporation formed under the laws of the Province of Ontario (the “Buyer”), certify for and on behalf of the Buyer, and not in my personal capacity and without personal liability, that:

1. the representations and warranties of Buyer made pursuant to the PSA (i) were true and correct in all material respects on the date of the PSA and (ii) are true and correct in all material respects on the date hereof; and
2. the covenants and obligations contained in the PSA to be performed by Buyer on or before the date hereof have been performed in all material respects.

[signature page follows]

DATED as of the date first written above.

By: _____
Name:
Title:

EXHIBIT “H”

FORM OF LOCAL COMMUNITY COMMITMENT AGREEMENT

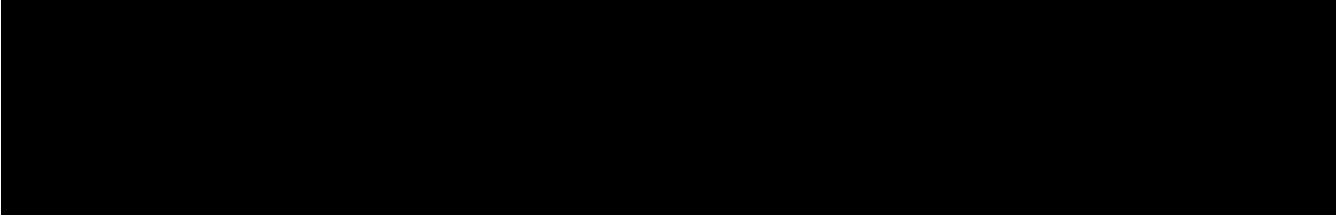


EXHIBIT “I”

FORM OF CONTRIBUTION AGREEMENT

