

EXECUTION COPY

THIS TRANSFERRED LIABILITIES AND RELEASE AGREEMENT made this 3rd day of December, 2003

AMONG:

FIVE NATIONS ENERGY INC., a body corporate incorporated pursuant to the *Canada Corporations Act* ("Five Nations")

OF THE FIRST PART

- and -

ATTAWAPISKAT FIRST NATION, a Band of Indians or any successor to the Band within the meaning of the *Indian Act* represented by the Attawapiskat Band Council (the "First Nation")

OF THE SECOND PART

- and -

HYDRO ONE REMOTE COMMUNITIES INC., a body corporate incorporated pursuant to the *Business Corporations Act* (Ontario), ("Remotes")

OF THE THIRD PART

WHEREAS pursuant to the agreement made between Hydro One Networks Inc. (under its former name "Ontario Hydro Networks Company Inc.") ("Networks") and Five Nations dated February 16, 2000 (the "Term Sheet") whereby Networks agreed to purchase certain assets from Five Nations subject to and in accordance with the terms and conditions set out therein;

WHEREAS one of the conditions precedent to the obligation of Networks to pay the balance of the purchase price for the Assets (as such term is defined in the Term Sheet) was that an agreement would be signed by the Parties hereto whereby certain environmental liabilities would be transferred to Five Nations coincidentally with the transfer of the generation assets in the case of Attawapiskat;

WHEREAS pursuant to an agreement of purchase and sale dated December 3, 2003 (the "APS"), Remotes has agreed to transfer and convey to the First Nation its right, title and interest in and to the Attawapiskat Assets, subject to and in accordance with the relevant terms and conditions set out in the APS;

WHEREAS one of the conditions precedent to Remotes transferring and conveying its right, title and interest in and to the Attawapiskat Assets to the First Nation specified in sub-section 10(a)(viii) of the APS is that the First Nation execute and deliver an agreement, in a form that is satisfactory to Remotes, that contains a release and indemnification clause in favour of Remotes;

WHEREAS the parties are entering into this Agreement for the purpose of describing the parties respective rights and obligations with respect to the Transferred Liabilities and for the First Nation to satisfy the aforementioned condition precedent in the APS;

NOW THEREFORE, for and in consideration of the mutual promises and of the agreements set forth herein and for good and valuable consideration the receipt and sufficiency of which is irrevocably acknowledged, the parties hereto mutually agree as follows:

1. All terms that are defined in the APS, which appear herein without definition, shall have the meanings respectively ascribed thereto in the APS, a copy of which is attached hereto as Appendix "1". In this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words shall have the following meanings:

"Ontario Hydro and Remotes Liabilities" means, with the exception of the Transferred Liabilities, all of the:

- (i) environmental liabilities and obligations which are comprised of, related to, based upon or associated with or arising out of or connected in any way with the distribution and generation of electricity for the community of Attawapiskat by Ontario Hydro and Remotes; and
- (ii) all other liabilities and obligations which are comprised of, related to, based upon or associated with or arising out of or connected in any way with the distribution and generation of electricity for the community of Attawapiskat by Ontario Hydro and Remotes with the exception of the liabilities specified in Subsections 5(i), 5(iii) and 5(iv) hereof.

"Transferred Liabilities" means all liabilities and obligations which are comprised of, related to, based upon or associated with or arising out of or connected in any way with the environmental contamination identified in the reports entitled "Environmental Site Assessments, Five Nations Communities of Fort Albany, Kashechewan and Attawapiskat (December 1999)" and "Preliminary Evaluation of Remedial Options: Five Nations Communities of Fort Albany, Kashechewan and Attawapiskat".

2. Five Nations represents and warrants to Remotes and the First Nation that:

- (a) Five Nations is a corporation duly incorporated and validly subsisting in all respects under the laws of its jurisdiction of incorporation;
- (b) Five Nations has all necessary corporate power, authority and capacity to enter into this Agreement and to perform its obligations hereunder;
- (c) the execution of this Agreement and compliance with and performance of the terms, conditions and covenants contemplated herein have been duly authorized by all necessary corporate action on the part of Five Nations;
- (d) no proceedings have been instituted by or against Five Nations with respect to bankruptcy, insolvency, liquidation or dissolution;
- (e) subject to the extent that equitable remedies such as specific performance and injunction are in the discretion of the court from which they are sought, this Agreement constitutes a valid and binding obligation of Five Nations enforceable against it in accordance with its terms and conditions, and Five Nations is not a party to, bound or effected by or otherwise subject to any indenture, mortgage, lease, charter or by-law provision, agreement or other instrument, or any statute, rule, regulation, judgement or other order which would be violated, contravened or breached by, or under which default by Five Nations would occur as a result of the execution of this Agreement or the compliance with and performance of any of the terms, conditions and covenants contemplated herein by Five Nations;
- (f) no consent, authorization or approval of, or exemption by, any governmental or public body or authority, or by any person, pursuant to statute, contract or otherwise, is required by Five Nations in connection with the execution and performance of this Agreement, or any of the covenants or transactions contemplated herein referred to, or the taking of any action contemplated herein; and

- (g) Five Nations has received competent and independent legal advice with respect to all the terms and conditions of this Agreement and its implementation.

3. Five Nations hereby agrees to assume, be liable for and bound by the Transferred Liabilities coincidentally with the transfer of Remotes' right, title and interest in and to the Attawapiskat Assets and to deliver the written assumption agreement attached hereto as Schedule "A" to Remotes to be released and become effective in accordance with the terms of the Escrow Agreement executed by the parties hereto and OEFC.

Furthermore, Five Nations hereby agrees to unconditionally and irrevocably indemnify and hold harmless Remotes, its directors, officers, agents and employees, the First Nation and its members from any and all actions, causes of actions, suits, debts, sums of money, expenses, damages, costs, claims and demands of any and every kind whatsoever at law or in equity which are comprised of, related to, based upon or associated with or arising out of or connected in any way with the Transferred Liabilities, including, but not limited to, any obligations to remediate the said contamination or pay the costs associated with same.

4. Remotes and the First Nation hereby agree that Five Nations may transfer the Transferred Liabilities to a subsidiary, affiliate or other designate of Five Nations provided that prior to the transfer, each of Remotes and the First Nation are satisfied as evidenced in writing that the proposed transferee has sufficient assets or security arrangements to fund the Transferred Liabilities and prior to such transfer, such transferee enters into an agreement with Remotes and the First Nation in such form as is acceptable to Remotes and the First Nation in their respective sole discretion, agreeing to assume, be liable for and bound by the Transferred Liabilities and which agreement will prohibit transfers of the Transferred Liabilities without Remotes' and the First Nation's written consent and will contain an indemnification clause in favour of Remotes and the First Nation.

5. Notwithstanding Section 5 of the APS, the contents of the Acknowledgement and Assumption Agreement executed and delivered by Remotes to INAC and the First Nation in accordance with Subsection 7(c) of the APS or the terms of the INAC Consent and Release, and with the exception of the Ontario Hydro and Remotes Liabilities being retained by Remotes, the First Nation, its successors and assigns, hereby on its own behalf and, to the extent it can legally bind its members, for and on behalf of all of its members (past, present and future) unconditionally releases and discharges Remotes, its successors and assigns and its employees, directors, officers, agents, servants and representatives, from and against any and all obligations, liabilities, actions, causes of actions, suits, debts, sums of money, expenses, damages, costs, claims and demands of any and every kind whatsoever at law or in equity which the First Nation or its members (past, present and future) now have or may hereafter have which are comprised of, related to, based upon or associated with or arising out of or connected in any way with:

- (i) the Electrification Agreement;
- (ii) the Transferred Liabilities;
- (iii) the state or condition of the Attawapiskat Assets or the transfer thereof; and
- (iv) any and all legal and financial obligation to pay the First Nation any further money or other consideration, including without limitation, any tax, levy or other charge by reason of, arising out of, associated with or related to this Agreement, the Electrification Agreement, the use or occupation of the Attawapiskat Reserve by Ontario Hydro or its predecessors or OEFC or Remotes; or the Attawapiskat Assets (including the transfer thereof to the First Nation).

6. The parties agree that all covenants, acknowledgements, agreements and other provisions in this Agreement and all representations and warranties of the parties hereto will survive the transfer of Remotes' right, title and interest in and to the Attawapiskat Assets and the delivery of this Agreement or any instrument, document or written statement delivered pursuant to this Agreement and will not merge therewith, subject to any express limitation or restriction in this Agreement to the contrary.
7. This Agreement is intended solely for the benefit of the parties hereto. Nothing in this Agreement shall be construed to create or negate any duty to, or standard of care with reference to, or any liability to, any person not a party to this Agreement.
8. Nothing in this Agreement creates the relationship of principal and agent, employer and employee, partnership or joint venture between the parties. The parties agree that they are and will at all times remain independent and are not and shall not represent themselves to be the agent, employee, partner or joint venturer of the other. No representations will be made or acts taken by any party which could establish any apparent relationship of agency, employment, joint venture or partnership and no party shall be bound in any manner whatsoever by any agreements, warranties or representations made by any other party to any other person nor with respect to any other action of any other party.
9. Each of the parties hereto agrees that it will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as may be reasonably necessary from time to time to give effect to this Agreement.
10. Any reference in this Agreement to any Act or statute or Section thereof or any regulation made pursuant thereto shall be deemed to be a reference to such Act or statute or Section or regulation as amended or re-enacted from time to time. Words importing the singular number include the plural and vice versa.
11. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.
12. Each party to this Agreement acknowledges and agrees that it has participated in the drafting of this Agreement and, accordingly this Agreement shall not be interpreted either more or less favourably in favour of any party to this Agreement by virtue of the fact that one party or its counsel has been principally responsible for drafting of all or a portion of this Agreement.
13. Any amendment to this Agreement shall not have any force and effect until it is reduced in writing and mutually agreed to and signed by all parties hereto.
14. This Agreement, together with the schedules hereto, represents the entire agreement between the parties hereto and supersedes all prior agreements, understandings, discussions, negotiations, representations and correspondence made by or between them.
15. The failure of any party hereto to enforce at any time any of the provisions of this Agreement or to exercise any right or option which is herein provided shall in no way be construed to be a waiver of such provision or any other provision nor in any way affect the validity of this Agreement or any part hereof or the right of any party to enforce thereafter each and every provision and to exercise any right or option. The waiver of any breach of this Agreement shall not be held to be a waiver of any other or subsequent breach. Nothing shall be construed or have the effect of a waiver except an instrument in writing signed by a duly authorized officer of the party

against whom such waiver is sought to be enforced which expressly and impliedly waives a right or rights or an option or options under this Agreement.

16. This Agreement and everything herein contained shall operate to the benefit of, and be binding upon, the respective successors, assigns and other legal representatives, as the case may be, of each of the parties hereto.

17. The parties shall bear their own expenses associated with the negotiation, execution and performance of this Agreement.

18. Each of the parties hereto confirms the truth and accuracy of the above recitals to this Agreement, to the extent that such recitals are applicable to that party, and agree that the recitals form part of this Agreement.

19. Except as expressly provided herein, neither this Agreement nor any rights, remedies, liabilities or obligations arising under it or by reason of it shall be assignable by any party. Subject thereto, this Agreement shall extend to, be binding upon and enure to the benefit of the parties hereto and their respective successors (including any successor by reason of amalgamation of any party hereto) and permitted assigns.

20. All notices must be given in writing and delivered in accordance with this clause. All notices shall be delivered to the other parties and no notice shall be effective until such delivery has been made. The addresses for delivery are:

- (a) Five Nations:
Five Nations Energy Inc.
Box 370
Moose Factory, Ontario P0L 1W0
Attn: President
- (b) The First Nation:
Attawapiskat First Nation
P.O. Box 248
Attawapiskat, ON P0L 1A0
Attention: Chief and Council
- (c) to Remotes:
Hydro One Remote Communities Inc.
9th Floor, 483 Bay Street, South Tower
Toronto, Ontario M5G 2P5
Attention: President

Notice shall be deemed to have been delivered:

- (a) if delivered by hand, upon receipt;
- (b) if delivered by electronic transmission, 48 hours after the time of transmission, excluding from the calculation weekends and public holidays; and
- (c) if delivered by registered mail, four (4) days after the mailing thereof, provided that if there is a postal strike such notice shall be delivered by hand.

21. Time shall in all respects be of the essence of this Agreement, and no extension or variation of this Agreement or any obligation hereunder shall operate as a waiver of this provision.

22. This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

IN WITNESS WHEREOF, Five Nations Energy Inc. and Hydro One Remote Communities Inc. have caused this Transferred Liabilities and Release Agreement to be executed by the signatures of their proper officers duly authorized in that behalf as of the day and year first above written.

FIVE NATIONS ENERGY INC.

Original Signed By Ernie Sutherland

Name: ERNIE SUTHERLAND
Title: PRESIDENT
I/we have authority to bind the Corporation.

Name: ED CHILTON
Title: TREASURER

HYDRO ONE REMOTE COMMUNITIES INC.

Name:
Title:
I have authority to bind the corporation.

IN WITNESS WHEREOF THIS TRANSFERRED LIABILITIES AND RELEASE AGREEMENT HAS BEEN EXECUTED ON BEHALF OF THE ATTAWAPISKAT BAND OF INDIANS by the Chief of the Attawapiskat Band of Indians duly authorized in that behalf at the Attawapiskat Reserve as of the day and year first above written.

Witness

Chief

EXECUTION COPY

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FIVE NATIONS ENERGY INC.

Original Signed By Ernie Sutherland

Name: ERNIE SUTHERLAND
Title: PRESIDENT
I/we have authority to bind the Corporation.

Name: ED Chilton
Title: TREASURER

HYDRO ONE REMOTE COMMUNITIES INC.

original signature of HORCI signing authority redacted

Name:
Title:
I have authority to bind the corporation.

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Witness

Chief

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FIVE NATIONS ENERGY INC.

Original Signed by Ed Chiton

Name: ERNIE SUTHERLAND
Title: PRESIDENT
I/we have authority to bind the Corporation.

Name: ED CHITON
Title: TREASURER

HYDRO ONE REMOTE COMMUNITIES INC.

Name:
Title:
I have authority to bind the corporation.

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Witness

Chief

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FIVE NATIONS ENERGY INC.

Name:
Title:
I/we have authority to bind the Corporation.

Name:
Title:

HYDRO ONE REMOTE COMMUNITIES INC.

Original Signed By Myles D'arce

Name: Myles D'arce
Title: President
I have authority to bind the corporation.

IN WITNESS WHEREOF THIS TRANSFERRED LIABILITIES AND RELEASE AGREEMENT HAS BEEN EXECUTED ON BEHALF OF THE ATTAWAPISKAT BAND OF INDIANS by the Chief of the Attawapiskat Band of Indians duly authorized in that behalf at the Attawapiskat Reserve as of the day and year first above written.

Witness

Chief

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FIVE NATIONS ENERGY INC.

Name:
Title:
I/we have authority to bind the Corporation.

Name:
Title:

HYDRO ONE REMOTE COMMUNITIES INC.

Name: °
Title:
I have authority to bind the corporation.

IN WITNESS WHEREOF THIS TRANSFERRED LIABILITIES AND RELEASE AGREEMENT HAS BEEN EXECUTED ON BEHALF OF THE ATTAWAPISKAT BAND OF INDIANS by the Chief of the Attawapiskat Band of Indians duly authorized in that behalf at the Attawapiskat Reserve as of the day and year first above written.

Original signature of witness redacted

Original signature of Chief redacted

Witness

Chief

Schedule "A": Five Nations Assumption Agreement

THIS ASSUMPTION AGREEMENT made as of the day of December, 2003

AMONG:

HYDRO ONE REMOTE COMMUNITIES INC., a body corporate incorporated pursuant to the *Business Corporations Act* (Ontario) ("Remotes")

OF THE FIRST PART

- and -

FIVE NATIONS ENERGY INC., a body corporate incorporated pursuant to the *Canada Corporations Act* ("Five Nations")

OF THE SECOND PART

- and -

ATTAWAPISKAT FIRST NATION, a Band of Indians or any successor to the Band within the meaning of the *Indian Act* represented by the Attawapiskat Band Council (the "First Nation")

OF THE THIRD PART

WHEREAS Five Nations, the First Nation and Remotes are parties to an agreement dated December 3, 2003 (the "TLRA") whereby Five Nations agreed to assume, be liable for and be bound by the Transferred Liabilities with effect upon the transfer and conveyance of the Attawapiskat Assets (as that term is defined in the Agreement of Purchase and Sale made among the First Nation, Remotes and Ontario Electricity Financial Corporation dated December 3, 2003 (the "Transfer"), subject to and in accordance with the terms and conditions set out in the TLRA;

WHEREAS the Transfer occurred on the 3rd day of December, 2003 (the "Transfer Date") as evidenced by the Bill of Sale made between Remotes and the First Nation dated the 3rd day of December, 2003 a copy of which is attached hereto as Exhibit 1;

NOW THEREFORE this Agreement witnesseth that for good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged, the parties hereto agree as follows:

1. Five Nations hereby assumes, accepts the liability for and acknowledges that it is bound by the Transferred Liabilities with effect as of the Transfer Date.

2.(a) If Remotes or the First Nation (a "Claiming Party") wishes to make a claim for indemnification pursuant to Section 3 of the TLRA (a "Claim") against Five Nations, the Claiming Party shall give written notice to Five Nations of the Claim, including the nature and amount thereof.

(b) Upon receipt of the notice of Claim:

(i) subject (ii) and (iii) below, Five Nations shall have the right to undertake the entire defence of any such Claim at its sole cost and expense by giving notice to the

Claiming Party of such intention within twenty (20) business days of the receipt of the aforesaid notice of Claim and such cost and expense shall be pursuant to the indemnity of Five Nations pursuant to Section 3 of the TLRA;

- (ii) failing delivery of notice from Five Nations of its intention to defend the Claim, the Claiming Party shall be at liberty to defend the said Claim at the sole cost and expense of Five Nations;
 - (iii) should Five Nations fail to diligently defend such Claim or should the Claiming Party determine, in its sole discretion, acting reasonably, that it is in its best interest, or it is in a position of conflict with Five Nations and wishes to undertake its own defence of such Claim, it shall be entitled to do so at the cost and expense of Five Nations and such costs and expenses shall be subject to the indemnity of Five Nations pursuant to Section 3 of the TLRA;
- (c) The Claiming Party and Five Nations shall co-operate fully with each other with respect to all Claims and shall keep each other fully advised with respect thereto; and
- (d) Five Nations shall pay indemnities pursuant to Section 3 of the TLRA within twenty (20) business days of the Claiming Party having paid a Claim provided that the Claiming Party has complied with the requirements of this Section 2.

3. This Agreement, together with Exhibit 1 attached hereto and the TLRA constitutes the entire agreement between the parties hereto with respect to the matter herein and supersedes all prior oral or written representations and agreements.

4. Each of the parties hereto agrees that it will do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as may be reasonably necessary from time to time to give effect to this Agreement.

5. This Agreement shall be effective as of the date first written above and shall be binding on and enure to the benefit of the successors and assigns of the parties hereto.

6. This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Province of Ontario and the laws of Canada applicable therein, and the Courts of Ontario shall have exclusive jurisdiction to adjudicate disputes concerning this Agreement.

7. Each of the parties hereto confirms the truth and accuracy of the above recitals to this Agreement, to the extent that such recitals are applicable to that party, and agree that the recitals form part of this Agreement.

8. This Agreement may be executed in counterparts, including facsimile counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement.

IN WITNESS WHEREOF, Five Nations Energy Inc. and Hydro One Remote Communities Inc. have caused this Assumption Agreement to be executed by the signatures of their proper officers duly authorized in that behalf as of the day and year first above written.

FIVE NATIONS ENERGY INC.

Name:
Title:
I/we have authority to bind the Corporation.

Name:
Title:

HYDRO ONE REMOTE COMMUNITIES INC.

Name:
Title:
I have authority to bind the corporation.

IN WITNESS WHEREOF THIS ASSUMPTION AGREEMENT HAS BEEN EXECUTED ON BEHALF OF THE ATTAWAPISKAT BAND OF INDIANS by the Chief of the Attawapiskat Band of Indians duly authorized in that behalf at the Attawapiskat Reserve as of the day and year first above written.

Witness

Chief