

**CONDITIONS OF SERVICE**

**APPENDIX D3**

**Capital Cost Recovery Agreement**

**Developments – Horizon Constructs**

**January 2015**



## Part B: Term and Termination

4. Subject to the termination rights and survival of provisions specified herein, the term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the later of: a) when the customer connections and/or customer forecast load materializes; or b) the end of the five (5)-year Customer Connection Horizon where the Distributor constructed the Distribution Facilities; unless terminated by either Party upon thirty (30) days prior written notice as provided for in Section 9 or as provided for in Section 6 or Section 7 of this Agreement.
  
5. The occurrence of any of the following shall constitute an event of default ("**Event of Default**") under this Agreement:
  - (a) failure of a Party to comply with any covenant or obligation as set forth in this Agreement, or breach of any representation or warranty, if such failure or breach is not remedied within thirty (30) days after delivery of written notice of such failure by the non-defaulting Party; or
  
  - (b) failure of the Customer to pay any amount due under the Agreement, if such failure is not remedied within five (5) Business Days after delivery of written notice of such failure by the Distributor; or
  
  - (c) failure of the Customer to provide, maintain, extend, replace or increase any security required by the Distributor under this Agreement, if such failure is not remedied within five (5) Business Days after delivery of written notice of such failure by the Distributor; or
  
  - (d) by decree of any governmental authority, a Party is adjudicated bankrupt or insolvent; or a Party files, or consents to the filing of, or has filed against it, a petition for bankruptcy or seeks or consents to an order of protection under any law relating to arrangements with creditors, insolvency or bankruptcy or if a receiver or receiver manager is appointed in respect of a Party or its assets.
  
6. Upon the occurrence of any of the Events of Default specified in Section 5, where the Distributor is the non-defaulting Party, the Distributor shall have the right, in its discretion, to do any one or more of the following:
  - (a) suspend any or all of the services or obligations of the Distributor or rights of the Customer under this Agreement provided that such suspension shall not relieve the Customer of its obligations to make any payment required hereunder;

(b) exercise any of the rights and remedies of a secured party under this Agreement and under any law then in effect;

(c) exercise its right of set-off against any and all property of the Customer in the possession of the Distributor or its agent;

(d) draw on any outstanding irrevocable letter of credit issued for its benefit or realize upon any Expansion Deposit then held by it;

(e) liquidate any other security then held by or for the benefit of the Distributor free from any claim of set-off or otherwise or right of any nature of the Customer, including any equity or right of purchase or redemption by the Customer;

(f) terminate this Agreement by giving notice of termination to the Customer whereupon this Agreement shall terminate as at the effective date of termination specified in the notice;

(g) exercise any other rights or remedies the Distributor has at law, including bringing an action at law as may be necessary or advisable in order to recover any damages or costs incurred by the Distributor.

All rights and remedies of the Distributor provided herein are not intended to be exclusive but rather are cumulative and are in addition to any other right or remedy otherwise available to the Distributor at law or in equity.

7. Upon the occurrence of an Event of Default under Section 5(a) or 5(d), where the Customer is the non-defaulting Party, the Customer shall have the right to terminate this Agreement by giving notice of termination to the Distributor whereupon this Agreement shall terminate as at the effective date of termination specified in the notice.
8. Upon termination of this Agreement for any reason the relevant portions of this Agreement shall continue in effect after termination to the extent necessary to provide for any billings, adjustments and payments related to the period prior to termination; and except as provided in the Schedule C, the non-defaulting Party shall have no liability whatsoever to the defaulting Party arising from such termination. For greater certainty, the obligation to pay any amount which was due and payable prior to termination shall survive the termination of this Agreement.

### **Part C: Cancellation of the Project**

9. In accordance with the provisions of Section 4, the Customer shall have the right to terminate this Agreement on thirty (30) days prior written notice to the Distributor where the Customer elects not to proceed with the Project. Where the Customer elects to terminate the Agreement in accordance with this provision, the Customer agrees that it shall be responsible for and shall pay all Actual Costs incurred by the Distributor up until written notice is received by the Distributor.
10. Where the Customer provides notice in accordance with Section 9, the Distributor shall within sixty (60) Business Days of receipt of notice provide to the Customer a list of equipment and materials which have been ordered for the Project by the Distributor which the Distributor agrees that it will purchase. The Distributor agrees that any equipment and materials which it agrees to purchase will be deducted from the Actual Costs.
11. Where in accordance with Section 10 the Distributor elects not to purchase any equipment and materials, the Customer may elect to:
  - (a) have the Distributor purchase the equipment and materials and transfer to the Customer the title to and ownership of such equipment and materials on an "as is, where is basis"; or
  - (b) where the Distributor has purchased and installed the equipment and materials, have the Distributor remove the equipment and materials and provide title to and ownership of such equipment and materials on an "as is, where is basis".

The Customer acknowledges and agrees that it shall be responsible for any additional costs incurred by the Distributor in purchasing, transferring title and ownership, installation and removal or any other costs associated with the Customer making an election under this Section 11.

12. Where the Customer provides notice in accordance with Section 9, the Customer acknowledges that the Distributor shall be entitled to exercise any of the rights provided to it under Section 6 or elsewhere in this Agreement so as to permit the Distributor to recover any of the Actual Costs incurred by the Distributor under this Agreement.

### **Part D: The Work**

13. The Customer shall be responsible for the Customer's Work.

14. Prior to commencing construction on the Customer's Work pertaining to the Project, the Customer shall provide technical specifications for the Project for the Distributor's review and approval. The Customer shall not commence construction of the Customer's Work until the Distributor provides written approval. Until the Distributor has accepted the technical specifications, the Distributor shall not be obligated to energize the Project.
15. Upon completion of the Distributor's Work, the Distributor shall own, operate and maintain all equipment referred to in Schedule A. Furthermore, the Customer agrees that:
  - (a) ownership and title to the equipment referred to in this Section 15 shall throughout the term of this Agreement and thereafter remain vested in the Distributor and the Customer shall have no right of property therein; and
  - (b) any portion of the equipment referred to in this Section 15 that is located on the Customer's Property shall be and remain the property of the Distributor and shall not be or become fixtures and/or part of the Customer's Property.

The provisions of this Section 15 shall survive the termination of this Agreement.

16. Other than equipment referred to in the preceding Section 15 that will be constructed, operated and maintained by the Distributor, all other equipment that will be located on the Customer's Property without benefit of easement to the Distributor shall be constructed, operated and maintained by the Customer.

#### **Part E: Capital Contribution**

17. The Work Estimate and the amount of any initial Capital Contribution (if required) from the Customer for the Project is set out in Schedule B ( taxes are included in the amount shown as the Capital Contribution). The Customer acknowledges and agrees that the initial Capital Contribution is based on an initial Economic Evaluation using estimated Project costs and that the final Capital Contribution and true up will be based on Actual Costs.
18. Where the Customer has accepted the Distributor's offer to construct the distribution facilities, and if the Customer requests it, the Distributor shall provide to the Customer, at a cost equal to the Distributor's cost, an itemized list of the costs for the major items of the categories listed in Section 19(c) below.

19. If the Customer is required to pay a Capital Contribution, the Distributor will include the following additional information as part of Schedule B – Cost & Contribution:
- (a) the estimated initial Capital Contribution amount (plus taxes) that the Customer will have to pay for the Project; and
  - (b) the calculation used to determine the amount of the initial Capital Contribution to be paid by the Customer including all assumptions and inputs used to produce the initial Economic Evaluation; and
  - (c) a description of and costs associated with the Project broken down into the following categories:
    - (i) labour (including design, engineering and construction)
    - (ii) materials
    - (iii) equipment
    - (iv) overhead (including administration)
  - (d) if the offer is for a Residential Customer, the enclosed initial Economic Evaluation calculation inputs including the cost of the basic connection referred to in Section 3.1.4 of the Code, that has been included in the Distributor's OEB-approved revenue requirement and the initial Economic Evaluation; and
  - (e) if the offer is for a non-Residential Customer, the Distributor has included all connection costs in the initial Economic Evaluation; and
  - (f) if requested to do so by the Customer, the Distributor will provide to the Customer, for a charge equal to the Distributor's cost, an itemized list of the costs for the major items in each of the categories listed in Section 19(c) above, in respect of all of the work for the Project.
20. Once the Actual Costs are known and the Project has been energized, a final Economic Evaluation will be conducted by the Distributor and an adjustment will be made to the calculation of the initial Capital Contribution. The Customer shall pay to the Distributor within the Distributor's invoicing terms, any shortfall where the final Capital Contribution was greater than the initial Capital

Contribution, and the Distributor shall refund any surplus if the final Capital Contribution was less than the initial Capital Contribution.

21. Once the Distributor has calculated the final Capital Contribution amount, the Distributor shall provide to the Customer the calculation used to determine the amount of the final Capital Contribution required from the Customer, including all assumptions and inputs used to produce the final Economic Evaluation, at no charge to the Customer.

#### **Part F: Expansion Deposit**

22. The Customer shall deliver to the Distributor the Expansion Deposit set out in Schedule B. The Expansion Deposit may be used by the Distributor to cover the forecast risk associated with whether the forecasted revenues for the Project will materialize as projected, and the asset risk associated with ensuring that the Project is constructed, that it is completed to the proper design and technical standards and specifications, and that the facilities operate properly when energized.
23. The Expansion Deposit shall be in a form that is Acceptable, which may include an irrevocable letter of credit from a bank as defined in the Bank Act, a surety bond given by an acceptable insurance surety company, cash deposit or any combination thereof:
  - (a) where the Expansion Deposit is an irrevocable letter of credit, it shall be substantially in the form specified in Schedule F;
  - (b) where the Expansion Deposit is provided in the form of a cash deposit, and where the Distributor returns any portion of the Expansion Deposit, the Distributor shall return the Expansion Deposit to the Customer together with interest as follows:
    - (i) interest shall accrue monthly on the portion of the Expansion Deposit being returned, commencing on the receipt of the total Expansion Deposit required by the Distributor; and
    - (ii) the interest rate shall be at the prime business rate set by the Bank of Canada less 2 per cent.
24. Once the Project facilities are energized and subject to Sections 22 and this Section 24, the Distributor shall annually review and reassess the level of deposit required, based on actual loads for commercial and industrial developments and number of connections for residential developments, and if warranted, return a percentage of the deposit. The Distributor shall perform this calculation annually for the term of the agreement. At the end of the agreement, if the Customer forecasted



demand (for commercial and industrial developments) or Customer forecasted connections (for Residential developments) have not materialized, the Distributor shall retain the remaining portion of the Expansion Deposit. Should this occur, taxes on the retained Expansion Deposit will be charged to the Customer.

### **Part G: Information and Changes in Scope**

25. The Customer agrees to provide the Distributor with all information in the Customer's possession or reasonably obtainable by the Customer relating to the Project as may be necessary or helpful to the Distributor in performing its obligations hereunder, promptly upon request by the Distributor.
26. Should the Customer make any changes to the information provided to the Distributor and those changes result in an increase in the Actual Costs to the Distributor, the Distributor may recover any increase from the Customer in the form of an additional Capital Contribution and the Customer agrees to make such additional Capital Contribution as may be required by the Distributor in the time specified by the Distributor. Until such time as payment is received by the Distributor in accordance with this Section 26 the Distributor shall be permitted to suspend its performance under the Agreement.
27. The Customer agrees that any request for changes to the Work specified in Schedule A must be made in writing to the Distributor. Upon receiving such request the Distributor shall advise the Customer of any cost and schedule impacts that such changes will have on the Project and if any additional Capital Contribution will be required from the Customer. Where the Customer elects to proceed with such changes it shall provide to the Distributor its written approval to proceed along with any such additional Capital Contribution. Until such time as written approval and such additional Capital Contribution is received by the Distributor in accordance with this Section 27, the Distributor shall be permitted to suspend its performance under the Agreement.

### **Part H: Notices**

28. Any notice required to be given pursuant to this Agreement shall be in writing and shall be sufficiently given if delivered by hand or by courier, mailed by prepaid registered mail, or transmitted by facsimile or other similar form of telecommunication capable of confirming transmissions, and addressed to the Parties as follows:

**For Customer Connections:**

Horizon Utilities Corporation

55 John St. North  
Hamilton, Ontario L8R 3M8  
Attention: Manager, Customer Connections  
Phone No: (905) 317-4786  
Fax No: (905) 522-8373

**To Customer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_  
Phone No: (\_\_\_\_)\_\_\_\_-\_\_\_\_\_  
Fax No: (\_\_\_\_)\_\_\_\_-\_\_\_\_\_

Any notice delivered by hand or by courier shall be deemed to have been received on the date of delivery. Any notice sent by registered mail shall be deemed to have been received three (3) Business Days after mailing. During a postal strike or other interruption of the mail, notices shall be given by delivery or telecommunication only. Any notice transmitted to the receiving party by telecommunication, with receipt of transmission confirmed, shall be deemed to have been received at 10:00 o'clock in the forenoon (local time of the recipient) on the next Business Day following the day on which it is transmitted. The Parties may at any time hereafter change the person designated and/or their address as specified in this Section 28, by giving notice in the manner provided for herein.

**Part I: Confidentiality**

- 29. Each Party shall comply with the Confidentiality Terms attached hereto as Schedule "D". These Confidentiality Terms including the definitions shall survive the termination of this Agreement.

**Part J: Access and Easements**

- 30. The Customer agrees that the Distributor shall have free and uninterrupted rights of access and entry to the Customer's property for the purposes of constructing the Project and undertaking the Work and for any other purposes specified in this Agreement.
- 31. If an easement is required by the Distributor, the Customer shall grant such easement to the Distributor or cause any third party to grant such easement to the Distributor substantially in

accordance with the terms of Schedule E so as to allow the Distributor the use of such land as may be required by the Distributor for the purposes of this Agreement.

32. The Customer acknowledges and agrees that all costs related to the obtaining and registration of any and all easements in respect of the Project shall be the sole responsibility of the Customer, and that the Project will not be energized prior to the registration of the required easement against title.

**Part K: Schedules**

33. The Schedule(s) set out below are attached to and form part of this Agreement:

(a) Schedule A – The Work

(b) Schedule B – Cost & Contribution

(c) Schedule C – Standard Terms and Conditions for Capital Cost Recovery Agreements

(d) Schedule D – Confidentiality Terms

(e) Schedule E – Form of Easement

(f) Schedule F – Form of Irrevocable Letter of Credit

**[WHERE CUSTOMER IS A CORPORATION]**

**In witness whereof**, the Parties hereto, intending to be legally bound, have caused this Agreement to be executed by the signatures of their proper officers duly authorized in their behalf as of the day and year first above written.

\_\_\_\_\_  
Corporation's name

HORIZON UTILITIES CORPORATION  
Corporation's name

\_\_\_\_\_  
Authorizing signature and seal

\_\_\_\_\_  
Authorizing signature and seal

\_\_\_\_\_  
Signatory's name

\_\_\_\_\_  
Signatory's name

\_\_\_\_\_  
Signatory's title  
**I have the authority to bind the Corporation**

\_\_\_\_\_  
Signatory's title  
**I have the authority to bind the Corporation**

**[WHERE CUSTOMER IS AN INDIVIDUAL]**

**In witness whereof** the Customer has set his hand and seal, and the Distributor has caused this Agreement to be executed by the signature of its proper officer duly authorized in that behalf as of the day and year first above written.

\_\_\_\_\_  
Customer's name

HORIZON UTILITIES CORPORATION  
Corporation's name

\_\_\_\_\_  
Customer's signature

\_\_\_\_\_  
Authorizing signature and seal

\_\_\_\_\_  
Signatory's name

**SIGNED, SEALED AND DELIVERED**  
**in the presence of:**

\_\_\_\_\_  
Signatory's title  
**I have the authority to bind the Corporation**

\_\_\_\_\_  
Witness' signature

\_\_\_\_\_  
Witness' name

## **Schedule “A”- The Work**

### **Customer Connections - Horizon Constructs**

#### **THE PROJECT -**

##### **Scope**

The Customer has requested that the Distributor build an expansion of the Distribution System for the purposes of connecting the Customer to the Distribution System. The Project consists of the following Work:

**Date of Issue:**

**Preliminary Requested In-service Date:**

**Requested In-service Date:**

**Security Requirement:**

**Special Considerations:** *(e.g. ordering long lead material, concurrent processes)*

#### **HORIZON UTILITIES' WORK**

1. The work to be performed by the Distributor shall include the engineering, procurement of equipment, installation of equipment, inspection, commissioning and all other such work required to construct the Project, excluding the Customer's Work.
2. The Distributor shall, at the Customer's expense, provide:
  - a) temporary construction services to the Customer provided that the Customer has entered into a separate agreement with the Distributor covering the Distributor's Actual Costs; and
  - b) the design for the system showing the location of primary cables, service cables, transformers, duct system, foundations, road crossings and connection points with the Distributor's Distribution System; and
- a. an inspector on site when requested by the Customer; and

- d) the design for any expansion where the Distributor indicates in writing that such design is required.

### **Fully Recoverable Work**

#### **CUSTOMER'S WORK**

The work to be performed by the Customer shall include:

1. The Customer shall provide by no later than six (6) calendar months before the requested In-service Date and in such form and substance as may be reasonably satisfactory to the Distributor the following:
  - a) single line diagram indicating all electrical components and ratings;
  - b) written load estimate of the average monthly peak demand (kW) for the first five (5) years of service for each metered service;
  - c) site servicing plan showing proposed grades and elevations and locations of sewers, water mains, roadways and driveway locations.
  - d) if requested by the Distributor, a coordination protection study
2. Where the transformer will be owned by:
  - a) The Distributor, the Distributor shall purchase, supply, install and maintain the transformation;
  - b) The Customer, the Customer shall purchase, supply, install and maintain transformation that meets the approval of the Distributor.
3. Where the Customer's service entrance equipment will be comprised of a switchgear assembly: the Customer shall by no later than six (6) calendar months before the requested In-service Date provide the Distributor with:
  - a) detailed drawings, in such form and substance as may be reasonably satisfactory to the Distributor showing the three-line electrical diagram and physical accommodation for revenue metering equipment;
  - b) the manufacturer's address to which the Distributor will arrange the shipment of revenue metering instrument transformers for installation in the switchgear.

- c) The Customer shall submit any security or any other payment as described in Schedule B to the Distributor at the time specified in Schedule B.

**Easement**

- a) Required (from Customer):
- b) Name of Third Party for Easement:
- c) Easement Lands (description):
  
- d) Date on which Easement is required:


**Customer Notice Information:**

Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: (\_\_\_\_) \_\_\_\_\_  
Phone No: (\_\_\_\_) \_\_\_\_\_  
Customer Signature: \_\_\_\_\_



## Schedule "B"

### Cost and Contribution

 <b>HORIZON UTILITIES CORPORATION</b> Capital Cost Recovery Agreement – Horizon Build - Subdivision			
<b>Schedule B - Cost and Revenue</b>			
<b>COST</b>			
<b>Horizon Utilities Corporation Work Estimate of Total Costs:</b>			
<b>Description of Charges</b>	<b>Eligible - Alt Bid</b>	<b>Not Eligible - Alt Bid</b>	<b>Total</b>
Distribution Lines & Transformers	-	-	-
Services & Metering	-	-	-
<b>Total Project Costs before expansion costs</b>	-	-	-
Expansion Costs related to Electrical Distribution System Costs	-	-	-
<b>Total Project Costs including expansion costs</b>	-	-	-
<b>Number Customers/Connections:</b>			
Residential - # Customers	-		
Number of Transformers	-		
<b>NPV Components</b>			
Capital Expenditures - Project Costs & Expansion costs			-
Incremental Operating, Maintenance & Administration Costs			-
Distribution Revenue			-
<b>Net Present Value</b>			-
HST @ 13%			-
<b>Capital Contribution requirement</b>			<b>\$0.00</b>
<b>Expansion Deposit (excluding HST)</b>			<b>\$0.00</b>
<b>Fully recoverable work (@ \$3,500 per streetlight, plus HST)</b>			<b>\$0.00</b>
<b>Total Estimated Project Costs</b>			
<b>Direct Project Costs</b>		<b>\$</b>	
<b>Material Costs @ 45% of Direct Project Costs</b>			<b>\$0.00</b>
<b>Labour Costs @ 30% of Direct Project Costs</b>			<b>\$0.00</b>
<b>Equipment @ 20% of Direct Project Costs</b>			<b>\$0.00</b>
<b>Engineering &amp; Admin. @ 5% of Direct Project Costs</b>			<b>\$0.00</b>
			<b>\$0.00</b>
* A Letter of Credit is acceptable as payment of the Expansion Deposit. Please refer to Schedule C - Form Letter of Credit *HST will be charged on any Expansion Deposit retained by Horizon Utilites at the end of the agreement period			

## **Schedule “C”**

### **Standard Terms for Capital Cost Recovery Agreements**

#### **Definitions**

In this Agreement, the following words shall have the following meanings:

**“Acceptable”** means acceptable to the Distributor.

**“Actual Cost”** means the Distributor’s charge for equipment, labour and materials at the Distributor’s standard rates and overheads, interest thereon plus any costs payable by the Distributor to any other third Party for the purposes of constructing the Project, undertaking the Work and connecting the Project to the Distributor’s Distribution System. For greater certainty the Actual Costs may include but are not limited to all preliminary design costs, storage costs, warehouse costs, facility removal expenses, any costs of environmental remediation.

**“Agreement”** means the Capital Cost Recovery Agreement and all schedules attached thereto.

**“Applicable Laws”** means any and all applicable laws, including environmental laws, statutes, codes, licensing requirements, treaties, directives, rules, regulations, protocols, policies, by-laws, orders, injunctions, rulings, awards, judgments or decrees or any requirement or decision or agreement with or by any governmental or governmental department, commission board, court authority or agency.

**“Business Day”** means any day, excluding Saturday, Sunday, and any other day that is either a legal holiday or a day on which banking institutions are authorized or required by law or other governmental action to be closed, or a day designated by the Distributor.

**“Capital Contribution”** is the amount that a distributor may charge a customer which shall not exceed that customer’s share of the difference between the present value of the projected capital costs and the on-going maintenance costs for the facilities costs and the present value of the projected revenues associated with the distribution services provided by those facilities.

**“Code”** means the Distribution System Code revised on June 27, 2007 and as amended and approved by the OEB from time to time.

**“Confidential Information”** means all information whether transmitted orally, electronically or in written form, relating to the Project which a Party or its Representatives may receive or have received in the course of the Work and which contain or otherwise disclose information which the other Party reasonably claims as confidential or proprietary, including, but not limited to, the Distributor’s distribution system or transmission system design and system specifications. For further clarity, all requests for information made by a Party to the other Party are Confidential Information.

**“Customer Connection Horizon”** means the five (5)-year period as defined in Appendix B of the Code.

**“Customer’s Property”** means any lands owned by the Customer in fee simple or where the Customer has leasehold and/or easement rights.

**“Customer’s Work”** means the work to be performed by the Customer, at its sole expense, which is described in Schedule A.

**“Distribution Facilities”** means the Distributor’s plant or distribution assets.

**“Distribution System”** means the Distributor’s system for distributing electricity, and includes any structures, equipment or other things used for that purpose.

**“Distributors’ Work”** means the work to be performed by the Distributor, which is described in Schedule A.

**“Economic Evaluation”** means the discounted cash flow analysis as specified in Appendix B of the Code.

**“Forecasted Revenues”** means the distribution revenues that the Distributor expects to receive from the Customer connections or demand as forecasted by the Customer.

**“Good Utility Practice”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to optimum practice, method or act to the exclusion of all others, but rather to include all practices, methods or acts generally accepted in the industry.

**“HST”** means the harmonized sales tax eligible pursuant to the *Excise Tax Act* (Canada) or other federal Canadian tax legislation and applicable Ontario tax legislation, as amended from time to time.

**“In-service Date”** means the date that the Distributor approves the final energization of the Project.

**“Material”** relates to the essence of the contract, more than a mere annoyance to a right, but an actual obstacle preventing the performance or exercise of a right.

**“OEB”** means the Ontario Energy Board and any successor thereto.

**“Party”** means each of the Distributor and the Customer, and the Distributor and Customer are collectively referred to as the “Parties”.

**“Person”** shall include individuals, trusts, partnerships, firms and corporation or any other legal entity.

**“Project”** means the expansion of the Distributor’s distribution system as described in Schedule A for the purpose of connecting the Customer to the Distributor’s Distribution System.

**“Residential”** means an account taking electricity at 750 volts or less where the electricity is used exclusively in a separate metered living accommodation. Customers shall be residing in single-dwelling units that consist of a detached house or one unit of a semi-detached, duplex, triplex or quadruplex house, with a residential zoning. Separately metered dwellings within a townhouse complex or apartment building also qualify as residential customers. All customers are single-phase.

**“Representative”** means

- (a) a person controlling or controlled by or under common control of a Party and each of the respective directors, officers, employees and independent contractors of a Party and such Party’s Representative;
- (b) any consultants, agents or legal, financial or professional advisors of a Party or such Party’s Representative; and

- (c) in the case of the Customer, any institution providing or considering providing financing for the Project, including such institutions directors, officers, employees and independent contractors or its consultants, agents or legal, financial or professional advisors.

**“Requested In-service Date”** means the date specified in Schedule A by which final energization of the Project is requested.

**“Taxes”** means any and all taxes imposed by a governmental authority including but not limited HST, ad valorem, (including any provincial sales, excise or similar taxes), property, municipal, utility, sales, use, consumption, excise, transaction and other taxes, or increases therein.

**“Transfer Price”** means the price that the Distributor expects to pay for distribution facilities constructed by the Customer.

**“Variable Connection Fees”** means additional costs required to connect an expansion to the Distribution System, and shall be considered project specific.

**“Work that is eligible for alternative bid”** means work that under the Code either the Distributor or the Customer is permitted to perform as specified therein.

**“Work that is not eligible for alternative bid”** means the planning, design, engineering specifications and construction work related to the existing assets of the Distributor’s distribution system that only can be performed by the Distributor.

**“Work”** means all of the work to be conducted in accordance with The Work attached hereto as Schedule “A” and in accordance with the terms and conditions of this Agreement.

## **STANDARD CONDITIONS FOR CAPITAL COST RECOVERY AGREEMENTS**

### **Representations and Warranties**

Each Party represents and warrants to the other that:

- a) it is duly constituted, validly existing and in good standing under the laws of its governing jurisdiction; and
- b) it has the necessary power, authority and capacity and good and sufficient right to enter into this Agreement on the terms and conditions herein set forth, and the execution and performance of this Agreement will not conflict with, or constitute a breach under, any agreement to which it is a Party or any judgment, order, statute or regulation which is applicable to it; and
- c) this Agreement constitutes a valid and binding obligation of it, enforceable against it in accordance with its terms and conditions; and
- d) any individual executing the Agreement or any document hereunder has been duly authorized by the Party to sign the Agreement and any document hereunder; and
- e) it is registered for the purposes of Part IX of the *Excise Tax Act* (Canada); and
- f) it is not a non-resident of Canada within the meaning of the *Income Tax Act* (Canada), as amended; and

- g) no proceedings have been instituted by or against it with respect to bankruptcy, insolvency or liquidation.

## **Customer Acknowledgements**

The Customer acknowledges and agrees that:

- a) it will enter into such connection agreements or such other agreements as may be required by the *Ontario Energy Board Act, 1998* or the codes made by the Ontario Energy Board thereunder, or as may be required by the *Electricity Act, 1998* with the Distributor at least fourteen (14) days prior to the In-service Date; and
- b) it will ensure that all work performed by the Customer required for successful installation, testing and commissioning of the project and protective equipment (as required) is completed as required so as to permit the Distributor to witness and test to confirm the satisfactory performance of such systems; and
- c) the Project will not be energized until
- (i) the Distributor accepts the technical specifications (including electrical and civil drawings) for the Project and has accepted the Customer's verification of those portions of the Customer's Work which affects the Distributor's distribution system;
  - (ii) the Customer provides a detailed list of all materials used during construction;
  - (iii) a Professional Engineer or the Electrical Safety Authority certifies that all materials used during construction are in compliance with Ontario Regulation 22/04 and complies with the Distributor's approved specifications and the Project construction meets the intent of Ontario Regulation 22/04;
- d) all right, title and interest, including copyright ownership, to all information and material of any kind whatsoever (including, but not limited to the work product developed as part of the Work) that may be developed, conceived and/or produced by the Distributor during the performance of this Agreement is the property of the Distributor and the Customer shall not do any act that may compromise or diminish the Distributor's interest as aforesaid; and
- e) it will be responsible to rectify at its cost, any negative impacts that the connection of the Project and operation of the Project following connection may have on the Distributor's distribution system in accordance with Good Utility Practice and to the satisfaction of the Distributor. The Customer further acknowledges that the negative impacts on the Distributor's distribution system may include but are not limited to impacts on safety, reliability, efficiency, power factor and power quality, voltage disturbances, voltage flicker or objectionable harmonics on the distribution system or on other customers; and
- f) it is responsible for installing such equipment and facilities at the Project for the purpose of protecting its property, facility and equipment.

## **General Covenants**

The Parties acknowledge and agree that each Party shall:

- a) perform their respective obligations outlined in this Agreement in a manner consistent with Good Utility Practice and the Code and in compliance with all Applicable Laws including the Electrical Safety Code; and

- b) be responsible for obtaining and maintaining any and all permits, certificates, reviews and approvals required under Applicable Law with respect to the work that Party is undertaking in respect of the Project.

Except as provided herein, the Distributor makes no representation or warranty, express, implied, statutory or otherwise, including, but not limited to, any representation or warranty as to the merchantability or fitness of the Work or any part thereof for a particular purpose.

## Equipment

- a) The title to and ownership of all equipment placed on the Customer's property or on any easement by the Distributor or transferred by the Customer to the Distributor shall remain the property of the Distributor with full rights of removal. This provision shall survive the termination of this Agreement.

## Liability

The Parties acknowledge and agree that:

- a) each Party shall only be liable to the other Party for damages that arise directly out of the negligence or the wilful misconduct of that Party; and
- b) notwithstanding Section 6(a), the Parties shall not be liable under any circumstances whatsoever for any loss of profits or revenues, business interruption losses, loss of contract or loss of goodwill, or for any indirect, consequential, incidental or special damages, including but not limited to punitive or exemplary damages, whether any of the said liability, loss or damages arise in contract, tort or otherwise; and
- c) the Customer does hereby fully indemnify and save harmless the Distributor, its successors and assigns, its employees, agents and representatives of, from and against all damage, loss or injury to persons or property which may be suffered or which may hereafter be sustained or incurred by reason of, or in any way relating to, arising from, or based upon the performance of or purported performance of or non-performance of the Customer of any of its obligations or covenants in this Agreement, including without limitation those related to the Customer undertaking construction of the Work that is eligible for alternative bid contemplated by this Agreement and all manner of actions, suits, causes of action, proceedings, charges, expenses, risks, liabilities, debts, obligations, duties, claims and demands in connection therewith, save and except for any claim made as a result of any negligence or wilful misconduct on the part of the Distributor. This Section 6 shall survive the termination of this Agreement.

## Force Majeure

- a) Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, except obligations to make payments herein, to the extent that performance of any such obligation is prevented or delayed by any cause, existing or future, which is beyond the reasonable control of, and not a result of the fault or negligence of, the affected Party ("**Force Majeure**") and includes, but is not limited to, strikes, lockouts and any other labour disturbances.
- b) If a Party is prevented or delayed in the performance of any such obligation by Force Majeure, such Party shall immediately provide notice to the other Party of the circumstances preventing or delaying performance and the expected duration thereof. Such notice shall be confirmed in writing as soon as reasonably possible. The Party so affected by the Force Majeure shall endeavour to remove the obstacles which prevent performance and shall resume performance of its obligations as soon as reasonably practicable, except that there shall be no obligation on the Party so affected by the Force Majeure where the event of Force Majeure is a strike, lockout or other labour disturbance.

## General

- a) Each Party agrees that no portion of this Agreement shall be interpreted less favourably to either Party because that Party or its counsel was primarily responsible for the drafting of that portion.
- b) No amendment, modification or supplement to this Agreement shall be valid or binding unless set out in writing and executed by the Parties with the same degree of formality as the execution of this Agreement.
- c) 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 determine all disputes arising out of this Agreement.
- d) Each Party shall at the other Party's request and expense execute and do all such further acts and things as may be necessary to carry out the full intent and meaning of this Agreement and the transactions contemplated thereby.
- e) No waiver of any term of this Agreement is binding unless it is in writing and signed by the Party entitled to grant the waiver. No failure to exercise, and no delay in exercising, any right or remedy under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any term of this Agreement will be deemed to be a waiver of any subsequent breach of that term.
- f) Unless otherwise specified herein, and in addition to any other remedy provided in this Agreement, all overdue amounts that are outstanding for longer than thirty (30) days shall bear interest at 18 per cent per annum.
- g) If any provision of this Agreement is declared invalid or unenforceable by any competent authority such provision shall be deemed severed and shall not affect the validity or enforceability of the remaining provisions of this Agreement, unless such invalidity or unenforceability renders the operation of this Agreement impossible.
- h) This Agreement represents the entire agreement between the Parties hereto respecting the subject matter hereto and supersedes all prior agreements, understandings, discussions, negotiations, representations and correspondence made by or between them respecting the subject matter hereto.
- i) The Customer may not assign this Agreement without the prior written consent of the Distributor which consent may not be unreasonably withheld by the Distributor.
- j) 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.

## **Schedule “D”**

### **Confidentiality Terms**

#### **1. Disclosure of Confidential Information**

Pursuant to the terms and conditions contained herein, a Party may disclose Confidential Information to the other Party solely for the purpose of the Project or the Work. Notwithstanding such disclosure the Confidential Information shall remain the sole and exclusive property of the disclosing Party and as such shall be maintained in confidence by the receiving Party using the same care and discretion to avoid disclosure as the receiving Party uses with its own similar information that it does not wish to disclose. The receiving Party may disclose Confidential Information to its Representatives pursuant to Section 3 below but may not use or disclose it to others without the disclosing Party's prior written consent. Notwithstanding the generality of the foregoing, all intellectual property rights which may subsist in the Confidential Information shall remain with the disclosing Party. The receiving Party shall not use the confidential information for any purposes other than the Project or the Work without the disclosing Party's prior written consent.

#### **2. Information that is not Confidential**

Confidential Information shall not include information which:

- a) is previously known to or lawfully in the possession of the receiving Party prior to the date of disclosure as evidenced by the receiving Party's written record; and
- b) is independently known to or discovered by the receiving Party, without any reference to the Confidential Information; and
- c) is obtained by the receiving Party from an arm's length third Party having a bona fide right to disclose same and who was not otherwise under an obligation of confidence or fiduciary duty to the disclosing Party or its Representatives; and
- d) is or becomes publicly available through no fault or omission of, or breach of this Schedule “D” by, the receiving Party or its Representatives; and
- e) is disclosed by the disclosing Party to another entity without obligation of confidentiality; and
- f) is required to be disclosed on a non-confidential basis pursuant to a judicial or governmental order or other legal process as described in Section 5 or as set forth in Section 4.

#### **3. Disclosure to Representatives**

Confidential Information shall only be disclosed to Representatives who need to know the Confidential Information for the purposes of the Project or the Work. Except in the case of officers, directors or employees, Confidential Information may only be disclosed to Representatives where the receiving Party has an agreement in place with those Representatives sufficient to obligate them to treat the Confidential Information in accordance with the terms hereof. The receiving Party hereby specifically acknowledges that it shall be solely responsible to ensure that its Representatives comply with the terms of this Schedule “D” and that the receiving Party shall defend, indemnify and hold harmless the disclosing Party from and against all suits, actions, damages, claims and costs arising out of any breach of this Schedule “D” by the receiving Party or any of its Representatives.



#### **4. Compelled Disclosure**

In the event that a receiving Party, or anyone to whom a receiving Party transmits Confidential Information pursuant to this Schedule "D" or otherwise, becomes legally compelled to disclose any Confidential Information, the receiving Party will provide the disclosing Party with prompt notice so that the disclosing Party may seek injunctive relief or other appropriate remedies. In the event that both Parties are unable to prevent the further transmission of the Confidential Information, the receiving Party will, or will use reasonable efforts to cause such person to whom the receiving Party transmitted the Confidential Information to furnish only that portion of the Confidential Information, which the receiving Party is advised by written opinion of counsel is legally required to be furnished by the receiving Party, to such person and exercise reasonable efforts to obtain assurances that confidential treatment will be afforded to that portion of the Confidential Information so furnished.

#### **5. Records with respect to Confidential Information**

The receiving Party shall keep all written or electronic confidential information furnished to or created by it. All such Confidential Information, including that portion of the Confidential Information which consists of analyses, compilations, studies or other documents prepared by the receiving Party or by its Representatives, is the disclosing Party's property and will be returned immediately to the disclosing Party or destroyed upon its request and the receiving Party agrees not to retain any copies, extracts or other reproductions in whole or in part. If a receiving Party does not receive a request to return Confidential Information to the disclosing Party within six (6) months of the last communication between the Parties concerning the Project or the Work then the receiving Party shall destroy any Confidential Information it holds.

Notwithstanding the foregoing and provided that the Project is connected to the Distribution System, the Distributor shall have the right to retain such electrical information concerning the Project that it has received from the Customer or its Representatives for the purpose of the Distributor making the required calculations and decisions related to the design, operation, and maintenance of the Distributor's facilities and those for any other person that may connect or is considering connecting to the Distribution System that could be impacted by the Project.

#### **6. Remedies**

The receiving Party agrees that the disclosing Party would be irreparably injured by a breach of this Schedule "D" and that the disclosing Party shall be entitled to equitable relief, including a restraining order, injunctive relief, specific performance and/or other relief as may be granted by a court to prevent breaches of this Schedule "D" and to enforce specifically the terms and provision hereof in any action instituted in any court having subject matter jurisdiction, in addition to any other remedy to which the disclosing Party may be entitled at law or in equity in the event of any breach of the provisions hereof. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Schedule "D" but shall be in addition to all other remedies available at law or equity.

## Schedule "E"

### Form of Easement

#### Terms and Conditions of Easement

This is an easement in gross.

The Customer ("Transferor") grants an easement in gross and in perpetuity to the Distributor ("Transferee") in accordance with the following terms and conditions:

1. The Transferor is the owner in fee simple and possession, free from encumbrances, with good and marketable title of the lands described as:

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Hereinafter "Easement Lands",

2. Pursuant to the *Energy Competition Act, 1998* and amendments thereto, the Transferee has constructed, or is about to construct, an expansion or connection to its distribution system (hereinafter referred to as the Works) over, on and under the Easement Lands for the distribution of electrical energy.
3. The Transferor grants, transfers and conveys to the Transferee in registerable form and in consideration of the sum of two dollars (\$2.00), the free, uninterrupted and unobstructed rights and easement in perpetuity:
  - i. to construct, operate, maintain, re-locate, replace and remove said Works including without limitation all necessary poles, aerial and buried wires and cables, conduits, manholes, markers, transformers, fixtures and equipment and all appurtenances or accessories thereto as the Transferee may, from time to time, deem requisite; and
  - ii. to cut and remove all trees and brush on the Easement Lands; and
  - iii. for the Transferee's servants, agents, contractors, and workers, at all times to pass and re-pass with any vehicles, supplies and equipment along the Easement Lands for all purposes necessary for or incidental to the exercise and enjoyment of the rights herein granted and conveyed subject to payment by the Transferee of compensation for any damage caused thereby other than damage caused at the time of the original construction of said Works; and
  - iv. to use the Easement Lands for the purpose of providing telecommunications service and electrical energy service and distribution.
4. The Transferor covenants and agrees not to erect over, on and under the Easement Lands any buildings, structures, or other obstructions of any nature whatever except property line fences not exceeding six (6) feet in height; and further covenants and agrees not to change the grade of the Easement Lands if in the opinion of the Transferee such acts would interfere with the Works.
5. The Transferor covenants with the Transferee that it has the right to convey the Easement on the Easement Lands to The Transferee and that the Transferee will quietly possess and

enjoy the Easement Lands, and that it will execute such further assurances of the Easement as may be requisite.

6. The burden and benefit of the Transfer of Easement shall run with the land and shall extend to, be binding on and inure to the benefit of the Parties hereto and their respective successors and assigns.
7. Nothing herein contained shall in any way limit, restrict or interfere with or detract from the rights and powers given, granted and conferred upon the Transferee under the provisions of the *Energy Competition Act, 1998* or any amendment thereto or any other statute or regulation.
8. The mortgagee shall join in the instrument of transfer to subordinate and postpone its interest as mortgagee in favour of the rights and easement herein granted to the Transferee to the intent that for all purposes said rights and easement shall have priority over its mortgage.

## Schedule "F"

### Form of Irrevocable Letter of Credit

#### Irrevocable Standby Letter of Credit in favour of Horizon Utilities Corporation

Irrevocable/Standby Letter of Credit No: \_\_\_\_\_

Beneficiary:                    Horizon Utilities Corporation  
   P.O. Box 2249 Station LCD 1  
   55 John Street N.  
   Hamilton, Ontario, L8N 3E4

Applicant:

Amount:

Expiry Date:

We, [**Financial Institution Name**],[**Financial Institution Address**], hereby issue in favour of Horizon Utilities Corporation (the "Beneficiary") this irrevocable standby letter of credit.

This standby letter of credit is available for payment against presentation to [**Financial Institution Name**] at its above noted address of the following documents:

1. Beneficiary's signed written demand addressed to [**Financial Institution**], stating: "We, the undersigned Horizon Utilities Corporation, hereby demand payment of the sum of CAD..... (..... Canadian Dollars) under [**Financial Institution Name**] Standby Letter of Credit No: \_\_\_\_\_ and certify that the amount demanded herein is owing by \_\_\_\_\_ [**Applicant**] who is in default of its obligations under the agreement between Horizon Utilities Corporation and [**Applicant**] in accordance with the provisions of the Distribution System Code; and
2. Copy(ies) of the Beneficiary's invoice(s) to [**Applicant**] clearly stating the due date for payment.

Partial drawings are permitted.

This standby letter of credit shall be reduced automatically, by the amount of each drawing paid hereunder and/or by amendment, by the amount of reduction that may be authorized by the Beneficiary from time to time by their written request, signed by the Beneficiary and given to [**Financial Institution Name**]. Such amendment(s) shall become effective on the seventh (7th) calendar day from the date of issuance of the amendment.

[**Financial Institution Name**] hereby agrees that it will honour the Beneficiary's demand for payment, presented in compliance with the terms of this standby letter of credit, without enquiring whether the Beneficiary has a right as between itself and the Applicant to make such demand, and without recognizing any claim of the said Applicant.

It is a condition of this standby letter of credit that it shall be deemed to be automatically extended without amendment for one year from the present or any future expiration date hereof, unless at least sixty (60) days prior to any such expiration date, we notify the Beneficiary in writing by registered mail or courier that we elect not to consider this standby letter of credit renewed for such further period.

The originals of all amendments, correspondence, payments and notices hereunder, if any, shall be sent by courier to the Beneficiary at its above noted address, Attention: Director, Treasury & Risk.

Except as otherwise expressly stated this standby letter of credit is subject to the 'Uniform Customs and Practice for Documentary Credits updated July 1, 2007, UCP 600, (International Chamber of Commerce ("ICC") Publication No. 600)

We engage to honour presentations submitted within the terms and conditions above.