

*Green Bylaw
2880(2007)*

MUNICIPAL CO-OPERATION AGREEMENT

THE CITY OF NIAGARA FALLS

- and -

THE TOWN OF LINCOLN

- and -

THE TOWN OF PELHAM

- and -

THE TOWNSHIP OF WEST LINCOLN

December 31, 2007

TABLE OF CONTENTS

	Page
ARTICLE 1 INTERPRETATION	2
1.1 Defined Terms	2
1.2 Interpretation Not Affected by Headings	4
1.3 Number and Gender	4
1.4 Statutes and Amendments	4
ARTICLE 2 AMALGAMATION.....	5
2.1 Amalgamation and Share Allocation	5
ARTICLE 3 NEW SHAREHOLDER DECLARATION/AGREEMENT.....	5
3.1 Niagara Falls Shareholder Declaration	5
3.2 Penwest Shareholders Agreement.....	5
3.3 Niagara Falls Closing Deliveries.....	5
3.4 Penwest Closing Deliveries.....	5
ARTICLE 4 COVENANTS	6
4.1 Mutual Covenants	6
ARTICLE 5 HOLDING COMPANY SHARES	6
5.1 Municipal Hold Period	6
5.2 Right of First Refusal – Sale Initiated by Lincoln, Pelham or West Lincoln	6
5.3 Exercise of Right of First Refusal – Sale Initiated by Lincoln, Pelham & West Lincoln:	7
5.4 Sale of Holding Company Shares	7
5.5 Right of First Refusal – Sale Initiated by Niagara Falls	8
5.6 Exercise of Right of First Refusal - Sale Initiated by Niagara Falls:	8
5.7 Sale of Holding Company Shares	9
5.8 Moratorium on Sales While Purchase Offer Outstanding.....	9
ARTICLE 6 DISPUTE RESOLUTION.....	9
6.1 Disputes	9
6.2 Arbitration	10
ARTICLE 7 GENERAL PROVISIONS.....	10
7.1 Notices.....	10
7.2 Entire Agreement	12
7.3 Waiver, Amendment	12

7.4	Counterparts	12
7.5	Governing Law.....	12
7.6	Time of Essence	12
7.7	Severability.....	12
7.8	Assignment.....	13
7.9	Successors	13

MUNICIPAL CO-OPERATION AGREEMENT

THIS AGREEMENT made as of the 31st day of December, 2007,

AMONG:

THE CITY OF NIAGARA FALLS, a municipal corporation under the laws of Ontario ("**Niagara Falls**")

- and -

THE TOWN OF LINCOLN, a municipal corporation under the laws of Ontario ("**Lincoln**")

- and -

THE TOWN OF PELHAM, a municipal corporation under the laws of Ontario ("**Pelham**")

- and -

THE TOWNSHIP OF WEST LINCOLN, a municipal corporation under the laws of Ontario ("**West Lincoln**")

RECITALS:

- (a) Niagara Falls Hydro Holding Corporation ("**NFHC**") is wholly-owned by Niagara Falls and Niagara Falls Hydro Inc. ("**NFHI**") is wholly-owned by NFHC.
- (b) Peninsula West Power Inc. ("**PWPI**") is owned by Lincoln, Pelham and West Lincoln and Peninsula West Utilities Limited ("**PWUL**") is wholly-owned by PWPI.
- (c) The municipal councils of each of Lincoln, Pelham and Niagara Falls approved the Amalgamation. The municipal council of West Lincoln did not approve the Amalgamation.
- (d) The Existing Penwest Shareholders Agreement requires two thirds of the votes cast at a duly constituted meeting of the shareholders of PWPI to approve all shareholder decisions, including amalgamations. With the approval of Lincoln and Pelham, which collectively own 76% of the voting shares of PWPI, at a duly constituted shareholders meeting, the shareholders of PWPI have approved the Amalgamation.
- (e) NFHC and PWPI have agreed to enter into a Shareholders Agreement, in the form attached as a schedule to the Merger Agreement to be executed at Closing (the "**Shareholders Agreement**") which sets out their respective rights and obligations with respect to the management and operation of the amalgamated corporation resulting from

the amalgamation of NFHI and PWUL ("**Mergeco**") and the ownership of shares in Mergeco and with respect to their relationship towards each other;

- (f) Niagara Falls, Lincoln, Pelham and West Lincoln have agreed to enter into this Municipal Co-operation Agreement to set out certain understandings and obligations of the municipalities in respect of the amalgamation of NFHI and PWUL.

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the respective covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Defined Terms

All capitalized terms used in the recitals hereto and in this Agreement (including the schedules hereto) and not defined therein shall have the following meanings:

"Agreement" means this Agreement and all Schedules hereto, as amended, supplemented, restated or replaced from time to time in accordance with this Agreement;

"Amalgamation" means the amalgamation and continuation of NFHI and PWUL as Mergeco pursuant to the *Business Corporations Act* (Ontario) and in accordance with the Merger Agreement;

"Amalgamation Effective Date" has the meaning set forth in the Merger Agreement.

"Applicable Law" means, collectively, all applicable federal, provincial and municipal laws, statutes, ordinances, decrees, rules, regulations, by-laws, legally enforceable policies, codes, or guidelines; judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards; and conditions of any grant of approval, permission, certification, consent, registration, authority or licence by any statutory body, self-regulatory authority, stock exchange or other Governmental Authority;

"Business Day" means any day other than a day which is a Saturday, a Sunday or a statutory holiday in the Province of Ontario;

"Closing" has the meaning set forth in the Merger Agreement;

"Closing Date" has the meaning set forth in the Merger Agreement;

"Contract" means, in respect of a particular Person, any contract, note, bond, mortgage, agreement, indenture, lease, agreement to lease, licence, personal property lease, commitment, understanding, instrument, option or any other instrument, document or

obligation, oral or written, to which such Person is a party or whereby such Person's assets may be bound;

"Existing Niagara Falls Shareholder Declaration" means the Shareholder Declaration dated April 1, 2000 made by Niagara Falls in respect of NFHC and its subsidiaries, including NFHI;

"Existing Penwest Shareholders Agreement" means the Shareholders Agreement dated October 25, 2000 among Lincoln, Pelham and West Lincoln and others in respect of PWPI and its subsidiaries including PWUL;

"Governmental Authority" means any government or political subdivision (including without limitation, any municipality or federal or provincial ministry) or quasi-governmental or regulatory agency, authority, board, commission, department or instrumentality of any government or political subdivision, or any court or tribunal;

"Holding Company" means either NFHC or PWPI or any successor thereto;

"Holding Company Shares" means the NFHC Shares and the PWPI Shares;

"includes" means "includes, without limitation" and **"including"** means "including without limitation";

"Interim Period" means the period from and including the date of the Merger Agreement to and including the Closing Date or the earlier termination of the Merger Agreement;

"Mergeco" mean the amalgamated corporation resulting from the Amalgamation;

"Mergeco Shares" means shares in the capital stock of Mergeco;

"Merger Agreement" means the Merger Agreement among NFHC, NFHI, PWPI and PWUL dated as of the date of this Agreement;

"Municipal Hold Period" has the meaning set forth in Section 5.1;

"New Niagara Falls Shareholder Declaration" has the meaning set forth in Section 3.1;

"New Penwest Shareholders Agreement" has the meaning set forth in Section 3.2;

"NFHC Shares" means shares in the capital stock of NFHC;

"Offered Shares" has the meaning set forth in Section 5.2(a);

"Other Parties" has the meaning set forth in Section 5.2(b);

"Parties" means the parties to this Agreement, and **"Party"** means either one of them;

"Person" means any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, government, Governmental Authority and any other form of entity or organization;

"Prospective Purchaser" has the meaning set forth in Section 5.4;

"Purchase Notice" has the meaning set forth in Section 5.3;

"Purchase Price" has the meaning set forth in Section 5.2(a);

"PWPI Shares" means shares in the capital stock of PWPI;

"Right of First Refusal Period" has the meaning set forth in Section 5.3;

"Sale Notice" has the meaning set forth in Section 5.2(a);

"Shareholders Agreement" means the shareholders agreement to be entered into among NFHC, PWPI and Mergeco on Closing substantially in the form attached as Schedule 1.1 to the Merger Agreement.

"Term Sheet" means the Term Sheet dated June 8, 2006 among NFHC, NFHI, PWPI and PWUL relating to the proposed Amalgamation;

1.2 Interpretation Not Affected by Headings

The division of this Agreement into articles, sections, subsections, paragraphs, subparagraphs and clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms "this Agreement", "hereof", "herein", "hereunder" and similar expressions refer to this Agreement and the schedules hereto and not to any particular article, section, paragraph, subparagraph, clause or other hereof and include any agreement or instrument supplementary or ancillary hereto. Each Party acknowledges that it and its legal counsel have reviewed and participated in settling the terms of this Agreement.

1.3 Number and Gender

In this Agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 Statutes and Amendments

Any reference in this Agreement to an agreement, or to a statute, regulation or rule promulgated under a statute or to any provision of an agreement, a statute, regulation or rule shall be a reference to the agreement, statute, regulation, rule or provision, as amended, restated, re-enacted or replaced from time to time.

**ARTICLE 2
AMALGAMATION**

2.1 Amalgamation and Share Allocation

Each of Niagara Falls, Lincoln, Pelham and West Lincoln hereby acknowledge their approval of the Amalgamation on the terms and conditions set out in the Merger Agreement, including, without limitation, the initial allocation of shares of Mergeco between NFHC and PWPI which shall be as follows:

<u>Shareholder</u>	<u>Mergeco Shares</u>
NFHC	745 Shares
PWPI	255 Shares

**ARTICLE 3
NEW SHAREHOLDER DECLARATION/AGREEMENT**

3.1 Niagara Falls Shareholder Declaration

Niagara Falls agrees that, no later than the Closing Date, it shall authorize and approve a new shareholder declaration or amendment to the Existing Niagara Falls Shareholder Declaration (as appropriate) (the “**New Niagara Falls Shareholder Declaration**”) to reflect the creation of Mergeco and, to the extent necessary, the terms of the Shareholders Agreement.

3.2 Penwest Shareholders Agreement

Lincoln, Pelham and West Lincoln each agree that, no later than the Closing Date, they shall authorize and approve a new shareholders agreement or amendment to the Existing Penwest Shareholders Agreement (as applicable) (the “**New Penwest Shareholders Agreement**”) to reflect the creation of Mergeco and, to the extent necessary, the terms of the Shareholders Agreement.

3.3 Niagara Falls Closing Deliveries

At Closing, Niagara Falls shall deliver, or cause to be delivered, to Lincoln, Pelham and West Lincoln a copy of the New Niagara Falls Shareholder Declaration executed by Niagara Falls.

3.4 Penwest Closing Deliveries

At Closing, Lincoln, Pelham and West Lincoln shall deliver, or cause to be delivered, to Niagara Falls a copy of the New Penwest Shareholders Agreement executed by Lincoln, Pelham and West Lincoln.

ARTICLE 4 COVENANTS

4.1 Mutual Covenants

- (1) Co-operation and Compliance. Subject to the terms and conditions of this Agreement and Applicable Law, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable to complete the Amalgamation.
- (2) Confidentiality. Except as required by Applicable Law or a Governmental Authority, the Parties shall treat as confidential this Agreement, the Term Sheet, Merger Agreement and the Shareholders Agreement and all information provided to one another in accordance with this Agreement. Except as required by Applicable Law or a Governmental Authority, all such information shall be kept in the strictest confidence and not divulged to any unrelated third party.
- (3) Public Statements. The Parties agree that any public announcement, press release or other public disclosure in respect of the Amalgamation, this Agreement, the Term Sheet, the Shareholders Agreement or the Merger Agreement shall be prepared on a joint basis following consultation between the Parties and shall be in form and substance acceptable to all Parties. Upon the completion of the Amalgamation, the Parties may issue press releases mutually acceptable to all Parties.

ARTICLE 5 HOLDING COMPANY SHARES

5.1 Municipal Hold Period

No right, title, benefit or interest in any shares of NFHC or PWPI may be sold, transferred, assigned, pledged, made subject to any encumbrance or otherwise disposed of by any Party for the five (5) year period from the Closing Date (the "**Municipal Hold Period**") except with the prior written approval of all of the other Parties.

5.2 Right of First Refusal – Sale Initiated by Lincoln, Pelham or West Lincoln

- (a) Any of Lincoln, Pelham or West Lincoln (hereinafter in this Article 5 referred to as the "**Pen West Parties**") who desires to transfer or sell (hereinafter in this Article 5 referred to as the "**Pen West Selling Party**") all or any portion of its Holding Company Shares (hereinafter in this Article 5 referred to as the "**Pen West Offered Shares**") after the Municipal Hold Period shall give notice of such proposed sale (hereinafter in this Article 5 referred to as the "**Pen West Sale Notice**") to the other Pen West Parties (hereinafter in this Article 5 referred to as the "**Other Pen West Parties**") and shall set out in the Pen West Sale Notice the terms upon which and the price at which it desires to sell the Pen West Offered Shares (such price being hereinafter in this Article 5 referred to as the "**Pen West Purchase Price**").

- (b) Upon the Pen West Sale Notice being given, the Other Pen West Parties shall have the right to purchase all, but not less than all, as nearly may be in proportion to the number of shares of PWPI held by each such Other Pen West Party respectively as at the date of such offer (each a "Proportionate Share"), of the Pen West Offered Shares for the Pen West Purchase Price.

5.3 **Exercise of Right of First Refusal – Sale Initiated by Lincoln, Pelham & West Lincoln:**

The Other Pen West Parties shall have the option, exercisable by giving written notice of the exercise of such option (hereinafter in this Article 5 referred to as the "**Pen West Purchase Notice**") to the Pen West Selling Party within ninety (90) days (hereinafter in this Article 5 referred to as the "**Pen West Right of First Refusal Period**") subsequent to the date of receipt by the Other Pen West Parties of the Pen West Sale Notice, to purchase all but not less than all of its Proportionate Share of the Pen West Offered Shares at the Pen West Purchase Price and the terms set forth in the Pen West Sale Notice. The Pen West Purchase Notice shall state the number of Pen West Offered Shares it is desirous of purchasing which number shall either be (i) its Proportionate Share, or (ii) all but not less than all of the Pen West Offered Shares. If, within the Pen West Right of First Refusal Period, a Pen West Purchase Notice has not been received by the Pen West Selling Party from an Other Pen West Party, such Other Pen West Party shall be deemed to have declined to purchase the Pen West Offered Shares being offered. If the Other Pen West Parties do not claim their respective Proportionate Share of the Pen West Offered Shares, any unclaimed Pen West Offered Shares shall be used to satisfy the claims of such Other Pen West Parties for Pen West Offered Shares in excess of their Proportionate Share. The closing of the sale of the Pen West Offered Shares shall occur on the first Business Day following the expiry of the sixty (60) day period following the date of receipt by the Other Pen West Parties of the Pen West Purchase Notice or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or required period of notice or on such later date as may be agreed by the Pen West Parties.

5.4 **Sale of Holding Company Shares**

In the event that the Other Pen West Parties do not exercise their right of first refusal pursuant to Section 5.3, the rights of the Other Pen West Parties, subject as hereinafter provided, to purchase the Pen West Offered Shares shall forthwith terminate and the Pen West Selling Party, may sell the Pen West Offered Shares to Niagara Falls within ninety (90) days after the termination of the Pen West Right of First Refusal Period, for a price not less than the Pen West Purchase Price and on other terms no more favourable to Niagara Falls than those set forth in the Pen West Sale Notice. If Niagara Falls does not purchase the Pen West Offered Shares, the Pen West Selling Party may sell the Pen West Offered Shares to any Person (the "**Prospective Purchaser**") within a further ninety (90) days after the termination of the Pen West Right of First Refusal Period, for a price not less than the Pen West Purchase Price and on other terms no more favourable to the Prospective Purchaser than those set forth in the Pen West Sale Notice. Any Prospective Purchase must agree in writing to assume all obligations and liabilities of the Pen West Selling Party and be bound by the terms of all applicable agreements to which the Pen West Selling Party is bound with respect to the Pen West Offered Shares. If the Pen West

Offered Shares are not sold to within such ninety (90) day periods, or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or any required period of notice, on such terms, the rights of the Other Pen West Parties and Niagara Falls pursuant to Article 5 shall again take effect and so on from time to time. All tax, of any kind, including any tax payable on the transfer of electricity assets, payable as a result of the purchase of any Holding Company Shares shall be paid by the purchaser of such shares.

5.5 **Right of First Refusal – Sale Initiated by Niagara Falls**

- (a) Should Niagara Falls desire to transfer or sell all or any portion of its Holding Company Shares (hereinafter in this Article 5 referred to as the “**Niagara Offered Shares**”) after the Municipal Hold Period, Niagara Falls shall give notice of such proposed sale (hereinafter in this Article 5 referred to as the “**Niagara Sale Notice**”) to the other Parties (hereinafter in this Article 5 referred to as the “**Other Parties**”) and shall set out in the Niagara Sale Notice the terms upon which and the price at which it desires to sell the Niagara Offered Shares (such price being hereinafter in this Article 5 referred to as the “**Niagara Purchase Price**”).
- (b) Upon the Niagara Sale Notice being given, the Other Parties shall have the right to purchase all, but not less than all, of their Proportionate Share of the Niagara Offered Shares for the Niagara Purchase Price.

5.6 **Exercise of Right of First Refusal - Sale Initiated by Niagara Falls:**

The Other Parties shall have the option, exercisable by giving written notice of the exercise of such option (hereinafter in this Article 5 referred to as the “**Niagara Purchase Notice**”) to Niagara Falls within ninety (90) days (hereinafter in this Article 5 referred to as the “**Niagara Right of First Refusal Period**”) subsequent to the date of receipt by the Other Parties of the Niagara Sale Notice, to purchase all but not less than all of its Proportionate Share of the Niagara Offered Shares at the Niagara Purchase Price and the terms set forth in the Niagara Sale Notice. The Niagara Purchase Notice shall state the number of Niagara Offered Shares it is desirous of purchasing which number shall either be its (i) Proportionate Share, or (ii) all but not less than all of the Niagara Offered Shares. If, within the Niagara Right of First Refusal Period, a Niagara Purchase Notice has not been received by Niagara Falls from an Other Party, such Other Party shall be deemed to have declined to purchase the Niagara Offered Shares being offered. If the Other Parties do not claim their respective Proportionate Share of the Niagara Offered Shares, any unclaimed Niagara Offered Shares shall be used to satisfy the claims of such Other Parties for Niagara Offered Shares in excess of their Proportionate Share. The closing of the sale of the Niagara Offered Shares shall occur on the first Business Day following the expiry of the sixty (60) day period following the date of receipt by the Other Parties of the Niagara Purchase Notice or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or required period of notice or on such later date as may be agreed by the Parties.

5.7 Sale of Holding Company Shares

In the event that the Other Parties do not exercise their right of first refusal pursuant to Section 5.5, the rights of the Other Parties, subject as hereinafter provided, to purchase the Niagara Offered Shares shall forthwith terminate and the Niagara Selling Party, may sell the Niagara Offered Shares to any Person (the "Prospective Purchaser") within ninety (90) days after the termination of the Niagara Right of First Refusal Period, for a price not less than the Niagara Purchase Price and on other terms no more favourable to the Prospective Purchaser than those set forth in the Niagara Sale Notice. Any Prospective Purchase must agree in writing to assume all obligations and liabilities of the Niagara Selling Party and be bound by the terms of all applicable agreements to which the Niagara Selling Party is bound with respect to the Niagara Offered Shares. If the Niagara Offered Shares are not sold within such ninety (90) day period, or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or any required period of notice, on such terms, the rights of the Other Parties pursuant to Article 5 shall again take effect and so on from time to time. All tax, of any kind, including any tax payable on the transfer of electricity assets, payable as a result of the purchase of any Holding Company Shares shall be paid by the purchaser of such shares.

5.8 Moratorium on Sales While Purchase Offer Outstanding

Once a Party gives a Sale Notice (either the Pen West Sale Notice or the Niagara Sale Notice, as the case may be) pursuant to Article 5 hereof, for a period of one (1) year, no other Party shall be entitled to give a Sale Notice with respect to Holding Company Shares until such time as the Offered Shares (either the Pen West Offered Shares or the Niagara Offered Shares, as the case may be) are either sold to the Pen West Other Parties or the Other Parties, or a Prospective Purchaser, as the case may be, in accordance with the terms of this Article 5 or the sale of such shares to the Prospective Purchaser does not occur within the time limits prescribed in Article 5. No Party may proceed with any sale of any of the Holding Company Shares owned by it without complying with the relevant provisions of this Agreement.

ARTICLE 6 DISPUTE RESOLUTION

6.1 Disputes

Each Party shall appoint one or more representatives who shall be responsible for administering this Agreement on its behalf and for representing its respective interests in disputes relating to this Agreement. Any dispute between the Parties relating to this Agreement that is not resolved between such representatives within ten (10) Business Days of the date that one Party notifies the other Party of such dispute shall be referred by the Parties' representatives in writing to the Chief Administrative Officer of each Party for resolution. Such senior management shall use good faith efforts to resolve the dispute for a period of up to ten (10) Business Days.

6.2 Arbitration

If a dispute is not resolved by the procedure set forth in Section 6.1 above, such dispute may, by any Party, be referred to and resolved by arbitration by a single arbitrator in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), subject to the following modifications and additions:

- (a) The arbitration shall take place in the Province of Ontario, and shall be conducted in English.
- (b) The arbitration shall be conducted by a single arbitrator having no financial, business or personal interest in the outcome of the arbitration. The arbitrator shall be appointed jointly by agreement of the parties to such dispute. In the event the parties to such dispute are unable to agree on the appointment of the arbitrator within ten (10) days after notice of a demand for arbitration is given by a Party and agreed to by the other parties to such dispute, then the arbitrator shall be selected pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).
- (c) The arbitrator shall have the authority to award any remedy or relief that a court could order or grant in accordance with this Agreement including, without limitation, specific performance of any obligation, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.
- (d) The arbitrator shall have sole and exclusive jurisdiction to examine into, hear and determine all matters and questions of fact and law in respect of which any powers or authority has been conferred upon the arbitrator, including questions of jurisdiction. The arbitral award shall be in writing, stating the reasons for the award and shall be final and conclusive and is not open to appeal, question or review in any court and any determination by the arbitrator made under this Article is hereby ratified and confirmed and is binding upon all persons. No proceedings by or before the arbitrator shall be restrained by injunction, prohibition or other process or proceeding in any court, or are removable by certiorari or otherwise into any court.

ARTICLE 7 GENERAL PROVISIONS

7.1 Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or by hand-delivery as provided below. Any such notice or other communication, if sent by facsimile, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand, shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also

be governed by this Section 7.1. Notices and other communications shall be addressed as follows:

- (a) in the case of Niagara Falls:

Niagara Falls Hydro Inc.
7447 Pin Oak Drive, P.O. Box 120
Niagara Falls, ON L2E 6S9

Attention: Brian Wilkie, President
Fax: (905) 356-0118

- (b) in the case of Lincoln:

The Corporation of the Town of Lincoln
4800 South Service Road
Beamsville, ON L0R 1B1

Attention: William Kolasa, Clerk
Fax No.: 905-563-6566

- (c) in the case of West Lincoln:

The Corporation of the Township of West Lincoln
318 Canboro Street, Box 400
Smithville ON L0R 2A0

Attention: Carolyn Langley, Clerk
Fax No.: 905-957-3219

- (d) in the case of Pelham:

The Corporation of the Town of Pelham
20 Pelham Town Square
Box 400
Fonthill, ON L0S 1E0

Attention: Cheryl Miclette, Clerk
Fax No.: 905 892 5055

Notwithstanding the foregoing, any notice of arbitration permitted to be given by any party pursuant to or in connection with any arbitration procedures in Section 6.2 may only be delivered by hand. Normal communications during the arbitration process itself may be delivered by facsimile, regular mail or by hand-delivery. The failure to send or deliver a copy of a notice to counsel shall not invalidate any notice given under this Section 7.1.

7.2 Entire Agreement

This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the Parties, written or oral, in respect thereof.

7.3 Waiver, Amendment

No modification of or amendment to this agreement shall be valid or binding unless set forth in writing and duly executed by each of the Parties. No waiver of any provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, no such waiver shall constitute a waiver of any other provision of this Agreement nor constitute a continuing waiver, or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply.

7.4 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement. Counterparts may be executed either in original or facsimile form and the Parties shall accept any signatures received by a receiving facsimile machine as original signatures of the Parties; provided, however, that any Party providing its signature in such manner shall promptly forward to the other Parties an original of the signed copy of this Agreement which was so facsimiled.

7.5 Governing Law

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. The Parties agree that the courts of Ontario shall have exclusive jurisdiction to determine all disputes and claims arising under or pursuant to this Agreement.

7.6 Time of Essence

Time shall be of the essence hereof.

7.7 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. In respect of any provision so determined to be unenforceable or invalid, the Parties agree to negotiate in good faith to replace the unenforceable or invalid provision with a new provision that is enforceable and valid in order to give effect to the business intent of the original provision to the extent permitted by law and in accordance with the intent of this Agreement.

7.8 Assignment

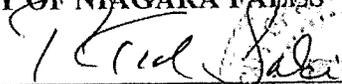
The rights or obligations of each Party hereunder shall not be assignable without the prior written consent of all of the other Parties.

7.9 Successors

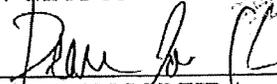
This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and permitted assigns, any rights remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF the parties hereto have duly authorized and executed this Agreement as of the day and year first above written.

THE CITY OF NIAGARA FALLS

By: 

Name: R.T. (TED) SALCI
Title: MAYOR

By: 

Name: DEAN IORFIDA
Title: CITY CLERK

THE TOWN OF LINCOLN

By: _____

Name:
Title:

By: _____

Name:
Title:

THE TOWN OF PELHAM

By: _____

Name:
Title:

By: _____

Name:
Title:

7.8 Assignment

The rights or obligations of each Party hereunder shall not be assignable without the prior written consent of all of the other Parties.

7.9 Successors

This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to confer upon any person, other than the Parties hereto and their respective successors and permitted assigns, any rights remedies, obligations or liabilities under or by reason of this Agreement.

IN WITNESS WHEREOF the parties hereto have duly authorized and executed this Agreement as of the day and year first above written.

THE CITY OF NIAGARA FALLS

By: _____
Name:
Title:

By: _____
Name:
Title:

THE TOWN OF LINCOLN

By: Bill Hodgson
Name: Bill Hodgson
Title: Mayor

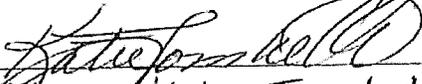
By: William Kolasa
Name: William Kolasa
Title: Clerk

THE TOWN OF PELHAM

By: Dave Augustyn
Name: Dave Augustyn
Title: Mayor

By: Chebyl Miellette
Name: Chebyl Miellette
Title: Clerk

THE TOWNSHIP OF WEST LINCOLN

By: 
Name: Katie Trombetta
Title: Mayor

By: 
Name: Carolyn Langley
Title: Clerk

SCHEDULE 1.1

MERGEICO SHAREHOLDERS AGREEMENT

Please see attached.

SHAREHOLDERS AGREEMENT

Dated as of January 1, 2008

NIAGARA FALLS HYDRO HOLDING CORPORATION

- and -

PENINSULA WEST POWER INC.

- and -

NIAGARA PENINSULA ENERGY INC.

- and -

**SUCH OTHER PERSONS AS MAY
BECOME SHAREHOLDERS IN NIAGARA PENINSULA ENERGY INC.**

**Borden Ladner Gervais LLP
Scotia Plaza, 40 King Street West
Toronto, Ontario
M5H 3Y4**

Privileged and Confidential

TABLE OF CONTENTS

ARTICLE 1 - INTERPRETATION	2
1.1 Definitions.....	2
1.2 Interpretation.....	6
1.3 Interpretation Not Affected by Headings.....	6
1.4 Number and Gender	6
1.5 Accounting Principles	6
1.6 Unanimous Shareholder Agreement	6
1.7 Statutes and Amendments.....	6
1.8 Schedules	6
ARTICLE 2 - OBJECTIVES, GUIDING PRINCIPLES AND PERMITTED BUSINESS ACTIVITIES 7	
2.1 Guiding Principles and Objectives.....	7
2.2 Financial Policies, Risk Management and Strategic Plan.....	7
2.3 Permitted Business Activities	8
ARTICLE 3 - IMPLEMENTATION OF THIS AGREEMENT	8
3.1 Carrying out of the Agreement	8
3.2 Endorsement on Certificate.....	9
ARTICLE 4 - DIRECTORS AND OFFICERS.....	9
4.1 Number of Directors	9
4.2 Initial Directors	9
4.3 Election of Directors	9
4.4 Changing The Number of Directors	9
4.5 Qualification of Directors	9
4.6 Affiliate Relationships Code.....	10
4.7 Chair.....	10
4.8 Term of Directors.....	10
4.9 Removal of Directors	10
4.10 Voting	11
4.11 Meeting of Directors	11
4.12 Quorum – Meetings of Directors	11
4.13 Vacancies	12
4.14 Insurance	12
4.15 Auditor	12
4.16 Corporate Governance Matters	12
4.17 Initial Senior Management Arrangements	13
ARTICLE 5 - APPROVAL OF CERTAIN CORPORATE ACTIONS.....	13
5.1 Approval by Shareholders.....	13

Privileged and Confidential

5.2	Special Resolution by Shareholders.....	14
5.3	Additional Shareholders.....	15
ARTICLE 6 - REPRESENTATIONS AND WARRANTIES		15
6.1	Representations and Warranties by Shareholders.....	15
ARTICLE 7 - RESTRICTIONS ON SHARE TRANSFERS		16
7.1	Restricted Sales of Shares	16
7.2	Agreement Binding on Transferees	16
7.3	Permitted Transferees	16
7.4	Pre-emptive Right	16
ARTICLE 8 - RIGHT OF FIRST REFUSAL		18
8.1	First Right of Refusal.....	18
8.2	Exercise of Right of First Refusal.....	19
8.3	Sale of Shares.....	19
8.4	Moratorium on Sales While Purchase Offer Outstanding	20
ARTICLE 9 – TAG-ALONG/DRAW ALONG RIGHTS		20
9.1	Tag-Along Rights.....	20
9.2	Drag-Along Rights.....	21
ARTICLE 10 - BUY-SELL RIGHTS.....		21
10.1	Buy-Sell	21
ARTICLE 11 - PUT OPTION		23
11.1	Put Option	23
ARTICLE 12 - PURCHASE OF SHARES ON DEEMED WITHDRAWAL.....		23
12.1	Deemed Withdrawal from the Corporation	23
12.2	Purchase of Shares on a Shareholder’s Withdrawal from the Corporation	24
12.3	Sale of Shares on Deemed Withdrawal from the Corporation	24
12.4	Share Purchase Price Determination.....	25
12.5	Cancellation of Shares	25
ARTICLE 13 - PROVISIONS APPLICABLE TO SALES OF SHARES PURSUANT TO THIS AGREEMENT		25
13.1	Application to All Sales	25
13.2	Closing	25
13.3	Cancellation of Share Certificates	25
13.4	Resignation of Seller’s Nominees.....	25

Privileged and Confidential

13.5	Transfer Taxes and Other Tax Impacts of a Proposed Sale.....	26
13.6	Additional Provisions: Loans, Guarantees.....	26
ARTICLE 14 - NON-COMPETITION AND CONFIDENTIALITY.....		26
14.1	Non-Competition	26
14.2	Necessary Covenants	27
14.3	Confidential Information	27
14.4	Survival of Obligations	27
ARTICLE 15 - NOTICES		27
15.1	Notices	27
ARTICLE 16 - DISPUTE RESOLUTION.....		28
16.1	Disputes.....	28
16.2	Arbitration.....	28
ARTICLE 17 - MISCELLANEOUS		29
17.1	Termination.....	29
17.2	Successors and Assigns.....	29
17.3	Assignment	29
17.4	Time is of the Essence	29
17.5	Further Assurances.....	29
17.6	Counterparts.....	30
17.7	Governing Law	30
17.8	Amendments and Waivers	30
17.9	Severability	30

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SHAREHOLDERS AGREEMENT

THIS AGREEMENT made as of the 1st day of January, 2008.

AMONG:

NIAGARA FALLS HYDRO HOLDING CORPORATION, a corporation duly incorporated under the *Business Corporations Act* (Ontario) (hereinafter referred to as “**NFHC**”)

- and -

PENINSULA WEST POWER INC., a corporation duly incorporated under the *Business Corporations Act* (Ontario) (hereinafter referred to as “**PWPI**”)

- and -

NIAGARA PENINSULA ENERGY INC., a corporation duly amalgamated under the *Business Corporations Act* (Ontario) (hereinafter referred to as the “**Corporation**”)

- and -

SUCH OTHER PERSONS AS MAY FROM TIME TO TIME BECOME SHAREHOLDERS IN THE CORPORATION AND PARTIES HERETO

RECITALS:

- A. NFHC was the sole shareholder of Niagara Falls Hydro Inc. (“**NFHI**”) an electricity distribution company created pursuant to Section 142 of the *Electricity Act, 1998* (Ontario) (the “**Electricity Act**”);
- B. PWPI was the sole shareholder of Peninsula West Utilities Limited (“**PWUL**”) an electricity distribution company created pursuant to Section 142 of the *Electricity Act*;
- C. NFHC is wholly-owned by Niagara Falls;
- D. PWPI is owned by Lincoln, Pelham and West Lincoln;
- E. NFHC and PWPI agreed to amalgamate NFHI and PWUL to form the Corporation (the “**Amalgamation**”) pursuant to the terms of the Merger Agreement dated December 31, 2007 among NFHC, NFHI, PWPI and PWUL (the “**Merger Agreement**”) and the Amalgamation Agreement among NFHC, NFHI, PWPI and PWUL dated December 31, 2007 and the Amalgamation was effective January 1, 2008;
- F. Upon the Amalgamation, NFHC received seven hundred and forty-five (745) common shares in exchange for one hundred (100) common shares in the capital of

NFHI and PWPI received two hundred and fifty-five (255) common shares in exchange for one hundred (100) common shares in the capital of PWUL;

- G. The Councils of Lincoln, Pelham and Niagara Falls approved the Amalgamation. The Council of West Lincoln did not approve the Amalgamation.
- H. The shareholder agreement of PWPI requires two-thirds (2/3) of the votes cast at a duly constituted meeting of the shareholders of PWPI to approve all shareholder decisions, including amalgamations. With the approval of Lincoln and Pelham, which collectively own 76% of the voting shares of PWPI, at a duly constituted shareholders meeting, the shareholders of PWPI approved the Amalgamation. PWPI, the sole shareholder of PWUL, approved the Amalgamation. The directors of both PWPI and PWUL approved the Amalgamation.
- I. The shareholders and directors of NFHC and NFHI approved the Amalgamation.
- J. The authorized capital of the Corporation consists of an unlimited number of common shares of which 1,000 are issued and outstanding.
- K. At the date hereof all of the issued and outstanding shares of the Corporation are registered and beneficially owned as follows:

<u>Shareholder</u>	<u>Corporation Shares</u>
NFHC	745 common shares
PWPI	255 common shares

- L. The parties have agreed to set out in this Agreement their respective rights and obligations with respect to the management and operation of the Corporation and the ownership of shares in the Corporation and with respect to their relationship towards each other; and
- M. The operation and management of the Corporation shall be based upon the general objectives and business principles set out in Section 2.1 of this Agreement.

NOW, THEREFORE IN CONSIDERATION OF THE FOREGOING AND OF THE MUTUAL COVENANTS HEREIN CONTAINED, THE PARTIES HERETO AGREE AS FOLLOWS:

ARTICLE 1 - INTERPRETATION

- 1.1 **Definitions:** Whenever used in this agreement unless there is something in the subject matter or context inconsistent therewith, the following terms shall have these respective meanings:

“Additional Shareholders” means such Persons, other than NFHC or PWPI, as may from time to time become shareholders of the Corporation and parties to this Agreement.

“Affiliate Relationships Code” means the Affiliate Relationships Code for Electricity Distributors and Transmitters issued by the OEB, as amended from time to time and any replacement code or directive.

“Agreement” means this Shareholders Agreement, and includes any agreement which is supplementary to or an amendment or confirmation of this Agreement (and which is entered into in accordance with this Agreement) and any schedules hereto or thereto.

“Amalgamation” has the meaning set forth in the Recitals to this Agreement.

“Applicable Law” means, collectively, all applicable federal, provincial and municipal laws, statutes, ordinances, decrees, rules, regulations, by-laws, legally enforceable policies, codes, or guidelines, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives, rulings or awards, and conditions of any grant of approval, permission, certification, consent, registration, authority or licence by any statutory body, self-regulatory authority or other Governmental Authority.

“Articles” means the articles of amalgamation of the Corporation in effect on the date hereof.

“Board” means the board of directors of the Corporation as elected by the Shareholders from time to time in accordance with the provisions of this Agreement.

“Business” means, with respect to the Corporation, the distribution of electricity to the customers of the Corporation and the provision of such ancillary services as may be determined from time to time and such other businesses which may be permitted to be undertaken by the Corporation pursuant to Section 2.3 of this Agreement.

“Business Day” means any day except Saturday, Sunday or any day which is a statutory holiday in the Province of Ontario.

“Chair” means the director who is appointed chair of the Board from time to time as provided in this Agreement.

“Council” means the municipal Council at such time of the Municipalities or of any other municipality which may become a direct or indirect shareholder of the Corporation from time to time.

“**Electricity Act**” means the *Electricity Act, 1998* (Ontario), as amended from time to time and any replacement or successor legislation.

“**Former Director**” has the meaning set forth in Section 4.13.

“**Governmental Authority**” means any government or political subdivision (including without limitation, any municipality or federal or provincial ministry) or quasi-governmental or regulatory agency, authority, board, commission, department or instrumentality of any government or political subdivision, or any court or tribunal including the IESO, OEB and OPA.

“**IESO**” means the Ontario Independent Electricity System Operator and any successor.

“**includes**” means “includes, without limitation” and “including” means “including, without limitation”.

“**Information**” has the meaning set forth in Section 14.3.

“**LDC**” means an electricity distribution corporation created pursuant to Section 142 of the *Electricity Act* and licensed to distribute electricity pursuant to the *OEB Act*.

“**Lincoln**” means the Town of Lincoln.

“**Municipalities**” means Lincoln, Niagara Falls, Pelham and West Lincoln;

“**Niagara Falls**” means the City of Niagara Falls.

“**Non-Selling Shareholder**” has the meaning set forth in Section 13.5(a).

“**OBCA**” means the *Business Corporations Act* (Ontario), as amended from time to time.

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

“**OEB Act**” means the *Ontario Energy Board Act, 1998*, as amended from time to time and any replacement or successor or legislation.

“**Offered Shares**” has the meaning set forth in Section 8.1(a).

“**OPA**” means the Ontario Power Authority and any successor.

“**Ordinary Course of Business**” means the conduct of the Business in the ordinary and usual course and in a manner consistent with the manner in which the Business is carried on as of the date hereof or as may be permitted pursuant to Section 2.3 hereof including as to the nature and scope of the Business and shall include the acquisition of the shares, assets or business of

LDC's and related businesses and the amalgamation of the Corporation with other LDC's.

"Parties" means the Shareholders and the Corporation and **"Party"** means any one of them.

"Pelham" means the Town of Pelham.

"Permitted Transferee" has the meaning set forth in Section 7.3(a).

"Person" means any individual, corporation, partnership, firm, joint venture, syndicate, association, trust, Governmental Authority and any other form of entity or organization.

"Pro Rata" means in the same proportion that the number of common shares owned by a Shareholder is to all of the then issued and outstanding common shares of all Shareholders of the Corporation.

"Prospective Purchaser" has the meaning set forth in Section 8.3.

"Purchase Notice" has the meaning set forth in Section 8.2.

"Purchase Price" has the meaning set forth in Section 8.1(a).

"Right of First Refusal Period" has the meaning set forth in Section 8.2.

"Remaining Shareholders" has the meaning set forth term in Section 8.1(b).

"Sale Notice" has the meaning set forth in Section 8.1(a).

"Selling Shareholder" has the meaning set forth in Section 8.1(a).

"Shareholder" means individually any, and **"Shareholders"** means collectively all, of NFHC and PWPI and any Person to whom any Shares are transferred, or issued, in accordance with the terms of this Agreement, at any time subsequent to the date of this Agreement.

"Shares" means common shares of the Corporation.

"Share Purchase Price" has the meaning set forth in Section 12.3.

"Special Resolution" means a resolution that is submitted to a meeting of the Shareholders called for the purpose of considering the resolution and passed, with or without amendment, at the meeting by at least two-thirds (2/3) of the votes cast.

"Standstill Period" means the five (5) year period from the date of this Agreement to and including January 1, 2013.

“**West Lincoln**” means the Township of West Lincoln.

“**Withdrawal Date**” has the meaning set forth in Section 12.4.

“**Withdrawing Shareholder**” has the meaning set forth in Section 12.2.

- 1.2 **Interpretation:** Unless otherwise defined in this Agreement, words and phrases that have not been defined shall have the meaning ascribed to them in the OBCA.
- 1.3 **Interpretation Not Affected by Headings:** The division of this Agreement into Articles, Sections, Subsections, Paragraphs, Subparagraphs and Clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular Article, Section, Subsection, Paragraph, Subparagraph or Clause or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something in the subject matter or context is inconsistent therewith, references herein to Articles and Sections are to Articles and Sections of this Agreement.
- 1.4 **Number and Gender:** Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa.
- 1.5 **Accounting Principles:** Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles.
- 1.6 **Effect of this Agreement:** To the extent that this Agreement specifies that any matters relating to the Corporation may only be or shall be dealt with or approved by, or shall require action by the Shareholders, the discretion and powers of the directors of the Corporation to manage and to supervise the management of the business and affairs of the Corporation with respect to such matters are correspondingly restricted. For greater certainty, the Parties agree that Sections 5.1 and 5.2 of this Agreement are intended to operate as a unanimous shareholders agreement with respect to the Corporation, within the provisions of Section 108(2) of the OBCA.
- 1.7 **Statutes and Amendments:** Any reference in this Agreement to an agreement, or to a statute, regulation or rule promulgated under a statute or to any provision of an agreement, a statute, regulation or rule shall be a reference to the agreement, statute, regulation, rule or provision, as amended, restated, re-enacted or replaced from time to time.
- 1.8 **Schedules:** The following schedules are incorporated herein and form part of this Agreement:

Schedule A

Valuation Method

**ARTICLE 2 - OBJECTIVES, GUIDING PRINCIPLES AND PERMITTED
BUSINESS ACTIVITIES**

2.1 **Guiding Principles and Objectives:** The Parties acknowledge and recognize the following guiding principles and objectives of the Corporation and the intention of the Shareholders that the Corporation be managed in a manner consistent with these guiding principles and objectives:

- (a) maintain local presence and control over the management of electricity services and rates;
- (b) improve electricity distribution services to local customers;
- (c) improve the utilization of existing resources;
- (d) explore business options that achieve new economics of scale and avoid duplication of services and costs to the customer;
- (e) pursue strategic partnerships that contribute to a strengthened corporate presence and voice – locally and provincially;
- (f) improve corporate flexibility to better respond to emerging business opportunities and complexities in the electricity market; and
- (g) increase corporation value to maximize Shareholder wealth.

2.2 **Financial Policies, Risk Management and Strategic Plan:** The Shareholders expect that the Board will establish policies to:

- (a) Capital Structure - develop and maintain a prudent financial and capitalization structure for the Corporation consistent with industry norms and sound financial principles and established on the basis that the Corporation is a self-financing entity;
- (b) Distribution Rates – ensure the establishment of just and reasonable electricity distribution rates for the regulated electricity distribution business of the Corporation which are:
 - (i) consistent with similar utilities in comparable growth areas and as may be permitted under the OEB Act;
 - (ii) intended to enhance the value of the Corporation; and
 - (iii) consistent with the encouragement of economic development and activity for each of the Shareholders.

It is the intention of the parties to harmonize the distribution rates of NFHI and PWUL conditional on receiving all necessary regulatory approvals;

- (c) Dividends – the establishment of a dividend policy, consistent with prudent financial practices, for the Corporation, all with the intention of providing the Shareholders with a reasonable rate of return on their investment while maintaining reasonable rates for customers;
- (d) Risk Management - manage all risks related to the Business conducted by the Corporation through the adoption of appropriate risk management strategies and internal controls consistent with industry norms; and
- (e) Strategic Plan - develop a long range strategic plan for the Corporation which is consistent with:
 - (i) the guiding principles and objectives in Section 2.1;
 - (ii) the maintenance of a viable Business; and preservation of the value of the Business for the Shareholders.

2.3 Permitted Business Activities:

The Corporation may engage in the business activities which are permitted by Applicable Law from time to time, including the Electricity Act and OEB Act and as the Board may authorize. In so doing, the Corporation shall conform to all requirements of the OEB, the IESO, the OPA and all other applicable Governmental Authorities.

ARTICLE 3 - IMPLEMENTATION OF THIS AGREEMENT

3.1 Carrying out of the Agreement:

- (a) The Shareholders shall at all times act and vote their Shares to carry out and cause the Corporation to carry out the provisions of this Agreement.
- (b) To the extent that each Shareholder is permitted by Applicable Law to bind its nominees to do so, the nominee directors of the Shareholder will act and vote as directors in order that the purpose, intent and provisions of this Agreement shall be carried out.
- (c) The Corporation confirms its knowledge of this Agreement and will carry out and be bound by the provisions of this Agreement to the full extent that it has the capacity and power at law to do so.

- 3.2 **Endorsement on Share Certificates:** Share Certificates of the Corporation shall bear the following language either as an endorsement or on the face thereof:

“The shares represented by this certificate are subject to all the terms and conditions of an agreement made as of January 1, 2008, a copy of which is on file at the registered office of the Corporation.”

ARTICLE 4 - DIRECTORS AND OFFICERS

4.1 **Number of Directors:**

- (a) The Articles of the Corporation shall provide for the Board to consist of a minimum of four (4) directors and a maximum of twelve (12) directors.
- (b) The initial Board shall consist of eight (8) directors.

- 4.2 **Nomination of the Initial Directors:** Subject to Sections 4.4, 4.6 and 4.8 , NFHC shall be entitled to nominate four (4) directors and PWPI shall be entitled to nominate four (4) directors and thereafter each of NFHC and PWPI shall be entitled to nominate an equal number of directors. Directors shall hold office until such time as their successors are elected by the Shareholders.

- 4.3 **Election of Directors:** The Shareholders shall at all times act and vote their Shares to elect as directors of the Corporation the individuals nominated as directors by each Shareholder, and, if required by a Shareholder, to remove such director(s). The Shareholders shall at all times act and vote their Shares to maintain the equal representation of both NFHC and PWPI on the Board.

- 4.4 **Changing the Number of Directors:** In the event that the Shareholders desire to increase or decrease the number of directors serving on the Board, the Shareholders shall elect such directors, as determined by the Shareholders, in order to maintain the equal representation of both NFHC and PWPI on the Board.

4.5 **Qualification of Directors:**

- (a) In addition to the requirements of the OBCA, the qualifications of candidates for the Board shall, where possible, include the following:
 - (i) commercial experience, sensitivity and acumen;
 - (ii) time availability;
 - (iii) corporate finance; accounting experience;
 - (iv) corporate governance experience;
 - (v) market development experience;

- (vi) industry knowledge including, but not limited to, knowledge of competitive energy or telecommunications markets;
 - (vii) independent, objective and sound of judgment;
 - (viii) personal integrity and honesty;
 - (ix) knowledge of public policy and government regulation issues relating to the Corporation and the electricity industry;
 - (x) knowledge and experience concerning environmental matters, labour relations and occupational health and safety issues;
 - (xi) knowledge of the local communities;
 - (xii) awareness of public policy issues related to the Corporation;
 - (xiii) business expertise, including marketing, product development, mergers and acquisitions and/or retail experience;
 - (xiv) experience on boards of significant commercial corporations, preferably with revenues of \$10 million annually or more; and
 - (xv) knowledge and experience with risk management strategy.
- (b) Preference may be given to qualified candidates for the Board who are residents of the Municipalities; however, non-residents of the Municipalities shall not be excluded from serving as members of the Board.
- 4.6 **Affiliate Relationships Code:** The composition of the Board shall comply with the provisions of the Affiliate Relationships Code, as applicable, unless an exemption from compliance applicable to the Corporation has been provided by the OEB and is in effect.
- 4.7 **Chair:** The Chair shall be selected by the Board from among the directors and shall preside at each meeting of the Board. In the absence of the Chair, the chairman of the meeting shall be selected by the directors in attendance at such meeting.
- 4.8 **Term of Directors:**
- (a) Each director of the Corporation shall be appointed for a term which may be from one (1) to three (3) years as provided in the by-laws of the Corporation.
 - (b) A director may be appointed for successive terms in the discretion of the Shareholder appointing such director.
- 4.9 **Removal of Directors:** Section 122 of the OBCA does not apply to the removal of directors from the Board. Each Shareholder shall be entitled in its discretion to cause any of the directors nominated by it to be removed and to nominate and have an

individual elect a successor or successors, as the case may be, by providing a direction in writing to the Corporation and to the other Shareholders who shall elect such replacement director or directors. Upon the resignation or removal of a director from the Board, the Shareholder that nominated such director shall use reasonable efforts to obtain and deliver to the Corporation a resignation and release from such director in a form satisfactory to the Corporation.

4.10 Voting:

- (a) All matters to be determined by the Board shall be determined by a majority vote of directors at a duly convened meeting of the Board and, in case of an equality of votes, the matter shall not be approved and the chairman of the meeting shall not be entitled to a second or casting vote.
- (b) Notwithstanding Section 4.10(a) above, in lieu of a meeting of the directors, the consent of the directors with respect to any matter may be evidenced by a resolution in writing (which may be in counterparts) signed by all of the directors.

4.11 Meeting of Directors:

- (a) The Board shall meet at least once each financial quarter at a time and place to be determined by the Chair. Additional meetings of the Board may be called by the Chair or any other director by notice in writing to every other director of the time, place and purpose of the meeting of the Board and the matters to be considered.
- (b) All meetings of the Board shall, unless held by telephone or video conference, be held within the Province of Ontario.
- (c) Any one or more of the directors may participate in a meeting of the Board by any telephonic or video device which permits all participants in the meeting to communicate with each other simultaneously and instantaneously, and such participation shall be deemed to constitute attendance at the meeting of the Board for the purpose of this Section 4.11. The Chair may determine that any meeting of the Board may be held by telephone or video conference.
- (d) At least seven (7) Business Days prior to each meeting, each director shall be notified in writing of the time, place and purpose of the meeting of the Board and the matters to be considered.
- (e) A director may waive notice of any meeting of the Board by an instrument in writing delivered to the Secretary of the Corporation.

4.12 Quorum – Meetings of Directors

- (a) A quorum for a meeting of the Board shall consist of a majority of the total number of elected directors, (rounded up to the next whole number) provided that, so long as NFHC and PWPI are the only Shareholders of the

Corporation, at least one (1) director who is a nominee of NFHC and at least one (1) director who is a nominee of PWPI must be present at all meetings of the Board.

- (b) If a quorum of directors is not present within thirty (30) minutes after the time appointed for a meeting of the Board, the meeting shall be adjourned to a date not less than five (5) and not more than fifteen (15) Business Days subsequent to the date originally set for the meeting, as the directors present at the meeting may determine.
- (c) At least two (2) Business Days prior written notice shall be provided to all of the directors of the date for the meeting adjourned pursuant to Section 4.12(b).
- (d) If a quorum is not present at such adjourned meeting, the Secretary of the Corporation shall forthwith call a further adjourned meeting of the Board, to be held not later than five (5) Business Days after the previously adjourned meeting was to be held and shall provide at least two (2) Business Days prior written notice thereof to the Shareholders. The Shareholders shall cause their respective nominee directors to attend, (or shall remove their nominee directors and nominate directors to be elected as replacement directors in accordance with Section 4.9 and cause such replacement directors to attend), the further adjourned meeting.

- 4.13 **Vacancies:** In the event of any vacancy occurring on the Board by reason of the death, disqualification, inability to act or resignation of any director (the “**Former Director**”), the Shareholder entitled to nominate the Former Director shall nominate another individual to replace the Former Director in order to fill such vacancy as soon as reasonably possible, and the Shareholders shall vote their Shares to elect such nominee accordingly.
- 4.14 **Insurance:** The Corporation shall acquire and maintain insurance coverage for the directors and officers of the Corporation as the Board may determine from time to time. In the event that such insurance coverage ceases to be available to the directors for any reason, each Shareholder shall be responsible for insuring its own nominees.
- 4.15 **Auditor:** Crawford, Smith, and Swallow shall be appointed as the initial auditor of the Corporation and shall hold office until such time as the Shareholders select a replacement.
- 4.16 **Corporate Governance Matters:** Subject to the provisions of Article 5, the Board shall supervise the management of the business and affairs of the Corporation and, in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation and each director shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

4.17 Initial Senior Executive Arrangements:

- (a) The Parties acknowledge and agree Brian Wilkie shall be the initial President and Chief Executive Officer of the Corporation.
- (b) In addition to the senior executive arrangements provided in Section 4.17(a) the Board shall appoint such other officers of the Corporation as the Board may determine.

ARTICLE 5 - APPROVAL OF CERTAIN CORPORATE ACTIONS

5.1 Unanimous Approval by Shareholders: Subject to Section 5.3, unless first approved by an unanimous resolution of Shareholders, either adopted at a meeting of the Shareholders called for that purpose or evidenced by a resolution in writing signed by all of the Shareholders, no action shall be taken by the Corporation with respect to any of the following matters:

- (a) Amalgamating, consolidating, reorganizing or merging the Corporation with another entity;
- (b) Create new classes of shares;
- (c) Issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class, of the Corporation or grant any option or other right to purchase any shares or securities convertible into such shares;
- (d) Amend the rights, restrictions or privileges of any Shares of the Corporation;
- (e) Disposing of or encumbering all or substantially all of the assets of the Corporation;
- (f) Changing the dividend policy for the Corporation;
- (g) Any amendment to the provisions of this Agreement regarding proportional representation of the Shareholders on the Board or the rights of Shareholders to nominate members of the Board;
- (h) Entering into any partnership, joint venture or other business venture that would involve the expenditure or investments of funds by the Corporation outside of the Ordinary Course of Business or that would change the status of the Corporation for taxation purposes, under the Electricity Act or the *Income Tax Act* (Canada), *Corporations Tax Act* (Ontario) or other Applicable Law;
- (i) Changing the capitalization policy or the financing policy for the Corporation;

- (j) Acquire any electricity distribution business outside of the municipal boundaries of the Municipalities or otherwise acquiring shares in another corporation;
- (k) Making loans or providing financial support to a Shareholder, an employee or a person not at arm's length to a Shareholder; or
- (l) Any amendment, assignment or termination of any agreement among the Corporation, Niagara Power Inc., Niagara West Transformation Corporation ("NWTC"), and/or PWPI regarding the administration and operation of NWTC and its transformation station.

5.2 **Special Resolution by Shareholders:** Subject to Section 5.3, unless first approved by a Special Resolution of the Shareholders, adopted at a meeting of the Shareholders called for that purpose, no action shall be taken by the Corporation with respect to any of the following matters:

- (a) Change the name of the Corporation;
- (b) Add, remove or change restrictions on the business of the Corporation;
- (c) Amendment of articles or bylaws of the Corporation;
- (d) Subject to Section 5.1(g) above regarding proportional representation on the Board, any change in the number of directors of the Corporation;
- (e) Redeem, purchase for cancellation or otherwise retire any outstanding shares of the Corporation;
- (f) Taking any action to wind-up or dissolve the Corporation;
- (g) Taking any bankruptcy or insolvency related actions with respect to the Corporation;
- (h) Apply to continue as a corporation in another jurisdiction;
- (i) Incurring single project capital expenditures greater than \$5 million;
- (j) Creating a subsidiary of the Corporation;
- (k) Borrowing of money in excess of \$5 million;
- (l) Becoming contingently liable for the debts or obligations of another person;
- (m) Changing the fiscal year end of the Corporation;
- (n) Changing the auditors of the Corporation;
- (o) Giving security on the Corporation assets except in the ordinary course of business; or

(p) Change in the location of the head office of the Corporation.

5.3 **Additional Shareholders:** In the event that Persons become Shareholders of the Corporation in addition to NFHC and PWPI other than in accordance with Articles 7, 8, 9, 10, 11 and 12 of this Agreement, the parties acknowledge that provisions of this Agreement shall be reviewed and, if required, revised in a manner to be determined by the parties consistent with the guiding principles of the Corporation as described in Section 2.1 of this Agreement.

ARTICLE 6 - REPRESENTATIONS AND WARRANTIES

6.1 **Representations and Warranties by Shareholders.** Each Shareholder represents and warrants to each of the other Shareholders and acknowledges that each of the other Shareholders is relying on these representations and warranties in connection with entering into this Agreement:

- (a) that each Shareholder owns beneficially and of record the number of issued and outstanding Shares which is set out opposite its name in Recital F to this Agreement, that those Shares are not subject to any mortgage, hypothec, lien, charge, priority, pledge, encumbrance, security interest or adverse claim, and that no Person has any rights to become a holder or possessor of any of those Shares or of the certificates representing them;
- (b) that it is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and that it has the corporate power and capacity to own its assets and to enter into and perform its obligations under this Agreement;
- (c) that this Agreement has been duly authorized, executed and delivered by it, and (assuming due execution and delivery by the other Parties) is a legal, valid and binding obligation of it enforceable against it in accordance with its terms;
- (d) that the execution, delivery and performance of this Agreement does not and will not contravene the provisions of its articles, by-laws, constating documents or other organizational documents, or the provisions of any contract, agreement or other instrument to which it is a party or by which it may be bound;
- (e) that the Shareholder is not a non-resident for purposes of the *Income Tax Act* (Canada); and
- (f) that all of the representations and warranties set out in Section 6.1(a) through (f) will continue to be true and correct during the term of this Agreement.

ARTICLE 7 - RESTRICTIONS ON SHARE TRANSFERS

- 7.1 **Standstill Period - Restricted Sales of Shares:** No Shareholder may sell all or any portion of its Shares without the prior written consent of all of the other Shareholders during the Standstill Period. After the Standstill Period has expired, a Shareholder may only sell, transfer, assign or otherwise dispose of the whole or any part of its Shares in accordance with this Agreement.
- 7.2 **Agreement Binding on Transferees:** No Shares of the Corporation shall be effectively issued, sold, assigned, transferred, disposed of or conveyed, by a Shareholder to any Person except in accordance with this Agreement and until the proposed transferee or purchaser executes and delivers to the Parties hereto an agreement to the same effect as this Agreement and any further agreement with respect to the Corporation to which the Shareholders are then, or are then required to be, a party. Upon the proposed transferee or purchaser so doing, such agreements shall enure to the benefit of and be binding upon all of the Parties to them as if all had executed and delivered the same agreements at the same time.
- 7.3 **Permitted Transferees:**
- (a) Subject to the restrictions on transfer or sale in Section 7.1 and 7.2 hereof, a Shareholder may, without the consent of the other Shareholders, transfer any or all of the Shares owned by it to any Person (hereinafter in this Section 7.3 referred to as a “**Permitted Transferee**”) provided that the Permitted Transferee is wholly-owned by such Shareholder or, if such Shareholder is a corporation, the Permitted Transferee is wholly-owned by the Controlling Shareholder of such Shareholder and provided that prior to any such transfer:
 - (i) the Permitted Transferee shall undertake in writing, by signing a counterpart of this Agreement, to be bound by the terms and conditions of this Agreement; and
 - (ii) the Controlling Shareholder of such Permitted Transferee represents, warrants, and undertakes in writing that it shall wholly own such Permitted Transferee for as long as such Permitted Transferee holds Shares of the Corporation.
 - (b) In the event that the transferee of the Shares ceases to be a Permitted Transferee for the purposes of this Section 7.3 then the Shares shall be promptly transferred back to the Shareholder.
- 7.4 **Pre-emptive Right:**
- (a) Except as expressly provided in this Agreement, if any additional Shares or other securities of the Corporation are approved for issue or if any other options or rights to purchase or subscribe for securities of the Corporation are approved for grant none of those Shares or other securities of the Corporation shall be issued by the Corporation, and none of those options or other rights

shall be granted, at any time after the date of this Agreement, except in compliance with this Section 7.4.

(b) If the Corporation proposes to issue any Shares or other securities of the Corporation (in this Section 7.4, the “**Affected Securities**”), the Corporation shall give notice (an “**Issue Notice**”) to the Shareholders of the proposed issuance. The Issue Notice shall constitute an offer for subscription by each of the Shareholders of that number of the Affected Securities (in this Section 7.4, its “**Proportionate Entitlement**”) which bear the same relationship to the total number of Affected Securities as the number of issued and outstanding Shares held by each such Shareholder bears to the total number of issued and outstanding Shares (as reflected on the securities registers of the Corporation) at the date of the Issue Notices (in this Section 7.4, the “**Notice Date**”) at the subscription price determined by the Board for all those Affected Securities. Each Issue Notice shall:

- (i) be made in writing by the Secretary and be made concurrently to all Shareholders in the same manner (whether by delivery, prepaid courier service or facsimile);
- (ii) contain a description of the terms and conditions relating to the Affected Securities, the price at which the Affected Securities are offered and the date on which the purchase of the Affected Securities by the Shareholders is to be completed; and
- (iii) state that any Shareholder that wishes to subscribe for less than its Proportionate Entitlement shall, in its notice of subscription, specify the number of Affected Securities (up to its Proportionate Entitlement) that it wishes to subscribe for.

The offer constituted by each Issue Notice shall be irrevocable and shall remain open for acceptance by the Shareholders for a period of thirty (30) days after the Notice Date.

- (c) Each of the Shareholders shall have the right, exercisable by notice given to the Corporation within the period during which the offer constituted by the Issue Notice is open for acceptance under Section 7.4(b), to accept the offer constituted by the Issue Notice to subscribe for its Proportionate Entitlement of the Affected Securities or, if it wishes to subscribe for less than its Proportionate Entitlement, to indicate how many Affected Securities (up to its Proportionate Entitlement) it wishes to subscribe for. If no notice is given by a Shareholder under this Section 7.4(c), that Shareholder shall be deemed to have rejected the offer made available to it to subscribe for Affected Securities.
- (d) If any of the Shareholders does not agree to purchase all of its Proportionate Entitlement of the Affected Securities or is deemed to have rejected the offer made available to it to subscribe for Affected Securities (in this Section 7.4, a

“Declining Offeree”), the Corporation shall forthwith so notify in writing (in this Section 7.4, the “Additional Notice”) each of the other Shareholders which has accepted the offer to subscribe for not less than its Proportionate Entitlement of the Affected Securities (in this Section 7.4, a “Purchasing Shareholder”). Each of the Purchasing Shareholders shall have the right to subscribe for that number or any part thereof, of the Affected Securities that have not been accepted for subscription by the Declining Offerees (the “Unsubscribed Securities”) which bears the same relationship to the total number of Unsubscribed Securities as the number of Shares held by each such Purchasing Shareholder bears to the total number of Shares by all Purchasing Shareholders (as reflected on the securities registers of the Corporation) at the date of the Additional Notice. Any Purchasing Shareholder that receives an Additional Notice shall have the right, exercisable by notice given to the Corporation within a period of ten (10) days after deemed receipt of that Additional Notice pursuant to Section 15.1, to agree that it will purchase the number of Unsubscribed Securities which it is entitled to purchase or any lesser number thereof specified by it in that notice. If no notice is given by a Purchasing Shareholder under this Section 7.4 within that ten (10) day period, that Purchasing Shareholder shall be deemed to have rejected the offer made available to it to purchase any Unsubscribed Securities. No Shareholder shall be obliged to purchase any Affected Securities in excess of the number indicated in its subscription.

- (e) If any Affected Securities of any issue are not subscribed for prior to the expiry of the last applicable period pursuant to Sections 7.4(c) and 7.4(d), the Corporation may offer those unsubscribed for Affected Securities within a period of ninety (90) days after the expiration of the last applicable period pursuant to Sections 7.4(c) and 7.4(d) to any Person, but the price at which those Affected Securities may be issued shall not be less than the subscription price offered to the Shareholders and the terms of payment for those unsubscribed for Affected Securities shall not be more favourable to that Person than the terms of payment offered to the Shareholders.
- (f) If the Corporation proposes to grant an option or other right for the purchase of or subscription for Affected Securities, that option or other right shall also be made available to Shareholders in accordance with Sections 7.4(b) through 7.4(e).
- (g) The Corporation shall be entitled to issue additional Shares without complying with the provisions of this Section 7.4 when those Shares are being issued on the exercise of existing options or rights to purchase or subscribe for Shares.

ARTICLE 8 - RIGHT OF FIRST REFUSAL

8.1 First Right of Refusal:

- (a) Any Shareholder (hereinafter in this Article 8 referred to as the “**Selling Shareholder**”) who desires to transfer or sell all, but not less than all, of its Shares (hereinafter in this Article 8 referred to as the “**Offered Shares**”) shall give notice of such proposed sale (hereinafter in this Article 8 referred to as the “**Sale Notice**”) to the Corporation and to the other Shareholders and shall set out in the Sale Notice the terms upon which and the price at which it desires to sell the Offered Shares (such price being hereinafter in this Article 8 referred to as the “**Purchase Price**”). A Shareholder selling Shares under this Section 8.1 must sell all, and not less than all, of its Offered Shares, unless the other Shareholders otherwise agree.
- (b) Upon the Sale Notice being given, the other Shareholders (hereinafter in this Article 8 referred to as the “**Remaining Shareholders**”) shall have the right to purchase all, but not less than all, of the Offered Shares for the Purchase Price on a Pro Rata basis as described in Section 8.2.

8.2 **Exercise of Right of First Refusal:** The Remaining Shareholders shall have the option, exercisable by giving written notice of the exercise of such option (hereinafter in this Article 8 referred to as the “**Purchase Notice**”) to the Selling Shareholder and the Corporation within ninety (90) days (hereinafter in this Article 8 referred to as the “**Right of First Refusal Period**”) subsequent to the date of deemed receipt, pursuant to Section 15.1 hereof, by the Remaining Shareholders of the Sale Notice, to purchase all but not less than all of the Offered Shares, on a Pro Rata basis, determined on the basis of the ratio of the number of Shares owned by each Remaining Shareholder to the number of Shares owned by all Remaining Shareholders at the Purchase Price and the terms set forth in the Sale Notice. If all the Offered Shares have not been purchased by the Remaining Shareholders then the remaining Offered Shares shall be offered to those Remaining Shareholders which have purchased Offered Shares on a Pro Rata basis until all of the Offered Shares have been purchased. The closing of the sale of the Offered Shares shall occur on the first Business Day following the expiry of the sixty (60) day period following the date of deemed receipt, pursuant to Section 15.1 hereof, by the Remaining Shareholders and the Corporation of the Purchase Notice or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or required period of notice or on such later date as may be agreed by the Parties.

8.3 **Sale of Shares:** In the event that the Remaining Shareholders do not exercise their right of first refusal pursuant to Section 8.2, the rights of the Remaining Shareholders, subject as hereinafter provided, to purchase the Offered Shares shall forthwith terminate and the Selling Shareholder, subject to the restrictions on transfer or sale specified in Section 13.5 hereof, may sell the Offered Shares to any Person (the “**Prospective Purchaser**”) within ninety (90) days after the termination of the Right of First Refusal Period, for a price not less than the Purchase Price and on other terms no more favourable to the Prospective Purchaser than those set forth in the Sale Notice, provided that the Prospective Purchaser agrees prior to such transaction to be

bound by this Agreement and to become a party hereto in place of the Selling Shareholder with respect to the Offered Shares. If the Offered Shares are not sold within such ninety (90) day period, or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) Business Days after receipt of such approval or any required period of notice, on such terms, the rights of the Remaining Shareholders pursuant to Sections 8.1 and 8.2 shall again take effect and so on from time to time.

- 8.4 **Moratorium on Sales While Purchase Offer Outstanding:** Once a Shareholder gives a Sale Notice pursuant to Section 8.1 hereof, for a period of one (1) year, no other Shareholder shall be entitled to give a Sale Notice with respect to Shares until such time as the Offered Shares are either sold to the Remaining Shareholders, or a Prospective Purchaser, as the case may be, in accordance with the terms of this Article 8 or the sale of such Shares to the Prospective Purchaser does not occur within the time limits prescribed in Section 8.3. No Shareholder may proceed with any sale of any of the Shares owned by it without complying with the relevant provisions of this Agreement.

ARTICLE 9 – TAG-ALONG/Drag Along Rights

9.1 **Tag-Along Rights:**

- (a) In the event that a Shareholder, or Shareholders together, owning a majority of the Shares (the "Majority Shareholder") proposes to sell all of its Shares (the "Offered Majority Shares") to an Arm's Length third party (the "Third Party") pursuant to Section 8.3, then the Majority Shareholder shall, within thirty (30) days following the expiry of the ninety (90) day period referred to in Section 8.3 of the Corporation, give written notice (the "**Tag-Along Notice**") of the identity of the Third Party and the price and other material terms of the transaction (which shall be consistent with the requirements of Section 8.1) to the owners of less than fifty percent (50%) of the Shares (the "Minority Shareholders"). The Minority Shareholders (each a "Minority Selling Shareholder") may, not later than ninety (90) Business Days after receipt of the Tag-Along Notice, deliver to the Majority Shareholder a notice in writing invoking the provisions of this Section 9.1 (a "**Tag-Along Demand**"). The delivery by a Minority Selling Shareholder of a Tag-Along Demand shall be irrevocable and shall bind such Minority Selling Shareholder to sell all, but not less than all, of the Shares owned by such Minority Selling Shareholder (the "**Tag-Along Shares**"), in accordance with the provisions of this Section 9.1.
- (b) If a Minority Shareholder delivers a Tag-Along Demand, then, before completing any sale, the Majority Shareholder shall cause the Third Party to deliver to each Minority Selling Shareholder a bona fide offer in writing (the "**Tag-Along Offer**") to purchase the Tag-Along Shares from such Minority

Selling Shareholder. The Tag-Along Offer will be binding upon the Third Party and shall contain only such terms and conditions as are identical to those upon which the Majority proposes to sell to the Third Party the Offered Majority Shares pursuant to Section 8.3, provided that the offer price per Share, which shall be specified in the Tag-Along Offer, shall be the same consideration as the consideration per Share at which the Majority Selling Shareholder proposes to sell to the Third Party the Offered Majority Shares pursuant to Section 8.3.

- (c) The closing date and other closing arrangements for the purchase and sale transaction between the Majority Shareholder and the Third Party shall be specified in the Tag-Along Offer and shall be the same, *mutatis mutandis*, as those specified between the Third Party and the Minority Shareholder.

9.2 Drag-Along Rights:

- (a) In the event that the Majority Shareholder proposes to sell the Offered Majority Shares to a Third Party pursuant to Section 8.3 and a Minority Shareholder (a "Non-Selling Minority Shareholder") has not exercised its Tag Along rights under Section 9.1, then the Majority Shareholder may, by written notice to the Non-Selling Minority Shareholders delivered within thirty (30) days following the expiry of the ninety (90) day period referred to in Section 9.1, accompanied by an irrevocable offer (the "**Drag-Along Offer**") from the Third Party to the Non-Selling Minority Shareholders to purchase, for a consideration that is the same as the consideration per Share at which the Majority Shareholder proposes to sell the Offered Majority Shares to the Third Party pursuant to Section 8.3, the Shares owned by the Non-Selling Minority Shareholders (the "**Dragged Shares**"), require the Non-Selling Minority Shareholder to sell to the Third Party all such Dragged Shares at the price specified in the Drag-Along Offer.
- (b) The delivery by the Majority Shareholder of an irrevocable Drag-Along Offer shall bind the Non-Selling Minority Shareholder to sell the Dragged Shares. The date on which the sale is to close and the other closing arrangements (which shall be the same, *mutatis mutandis*, as those for the purchase and sale between the Third Party and the Majority Shareholder) shall be as specified in the Drag-Along Offer. Except as specifically provided for above, the Drag-Along Offer shall contain only such terms and conditions, if any, as are identical to those pursuant to which the Majority Shareholder proposes to sell to the Third Party the Offered Shares.

ARTICLE 10- BUY-SELL RIGHTS

10.1 Buy-Sell:

- (1) Any Shareholder (in this Section 10.1, an "**Offeror**") may give notice (a "**Purchase or Sale Notice**") to the other Shareholders (in this Section 10.1, the "**Other**

Shareholders") of a proposed purchase or sale of Shares. The Purchase or Sale Notice shall constitute an offer (the "**Purchase Offer**") by the Offeror to the Other Shareholders to purchase all but not less than all of the issued and outstanding Shares held by the Other Shareholders at the Notice Date at a specified purchase price per Share (the "**Buy-Sell Share Price**") and shall in the alternative constitute an offer (the "**Sale Offer**") by the Offeror to sell all but not less than all of the issued and outstanding Shares held by the Offeror at the date of the Purchase or Sale Notices (in this Section 10.1, the "**Affected Shares**"; and the date of the Purchase or Sale Notices, in this Section 10.1, the "**Notice Date**") at the Buy-Sell Share Price. The Purchase and Sale Notices shall:

- (a) be made in writing by the Offeror and be made concurrently to all Other Shareholders in the same manner (whether by delivery, prepaid courier service or facsimile); and
- (b) state the Buy-Sell Share Price.

The offers constituted by each Purchase or Sale Notice shall be irrevocable and shall remain open for acceptance by the Other Shareholders for a period of ninety (90) days after the date of the Purchase and Sale Notice.

- (2) Each of the Other Shareholders shall have the right, exercisable by notice (in this Section 10.1, an "**Acceptance**") given to the Offeror within the period during which the offers constituted by the Purchase or Sale Notice is open for acceptance under Section 10.1(1) to accept the Purchase Offer and agree to sell to the Offeror all of that Other Shareholder's issued and outstanding Shares or to reject that offer and to accept the Sale Offer and agree to purchase the Affected Shares. If no Acceptance is given by an Other Shareholder under this Section 10.1(2), that Other Shareholder shall be deemed to have accepted the Purchase Offer constituted by the Purchase or Sale Notice.
- (3) If one or more of the Other Shareholders accept the Sale Offer, the Purchase Offer shall be deemed to have been rejected by all of the Other Shareholders. If only one Other Shareholder accepts the Sale Offer, that Other Shareholder shall be deemed to have agreed to purchase all of the Affected Shares. If two or more Other Shareholders accept the Sale Offer (in this Section 10.1, the "**Purchasing Shareholders**"), each of such Purchasing Shareholders shall be deemed to have agreed to purchase that number of the Affected Shares which bears the same relationship to the total number of Affected Shares as the number of issued and outstanding Shares held by each such Purchasing Shareholder bears to the total number of issued and outstanding Shares held by all Purchasing Shareholders (as reflected on the securities registers of the Corporation) at the Notice Date.
- (4) The completion of all purchases of Affected Shares or of the Shares held by the Other Shareholders, as the case may be, under this Section 10.1 shall occur on the thirtieth (30th) day after the expiry of the period during which the offers constituted by the Purchase and Sale Notice are open for acceptance.

- (5) Once a Shareholder gives a Purchase or Sale Notice, no Other Shareholder may give a Purchase or Sale Notice with respect to Shares, until such time as either the Affected Shares are sold to the Purchasing Shareholders or the Shares held by the Other Shareholders are sold to the Offeror pursuant to this Section 10.1.

ARTICLE 11 - PUT OPTION

11.1 Put Option:

- (a) The Shareholders other than the Majority Shareholder (in this Section 11.1, the "**Other Shareholders**") shall have the irrevocable right and option (the "**Put Option**") by notice to Majority Shareholder and the Corporation with a copy to the other Shareholders, to force the purchase by the Majority Shareholder or the Corporation, of all of the Shares held by that Other Shareholder at a total purchase price equal to the Put Option Price described in Section 11.1(b) below. The closing of the Put Option shall occur on the thirtieth (30th) day after the deemed receipt of notice of the exercise of the Put Option pursuant to Section 15.1 by the Majority Shareholder and the Corporation.
- (b) The "**Put Option Price**" for the purposes of this Article 11 shall mean the fair market value of each Share in which the Shareholder is deemed to have exercised the Put Option. Such Put Option Price shall be determined in a manner provided in Schedule A with the sixty (60) days immediately following the date of exercise of the Put Option.

ARTICLE 12 - PURCHASE OF SHARES ON DEEMED WITHDRAWAL

12.1 Deemed Withdrawal from the Corporation:

- (a) Subject to 12.1(b), for the purposes of this Article 12, a Shareholder shall be deemed to withdraw from the Corporation on that date (the "Withdrawal Date") when such Shareholder,
- (i) or its Controlling Shareholder: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar Applicable Law for the protection of creditors, including, the *Bankruptcy and Insolvency Act* (Canada) and the *Companies Creditors Arrangement Act* (Canada), the *Municipal Affairs Act* (Ontario) or other statute applicable to insolvent municipalities or has such petition filed against it and such petition is not withdrawn or dismissed for sixty (60) days after such filing; (ii) otherwise becomes bankrupt or insolvent (however evidenced); or (iii) is unable to pay its debts as they fall due;

- (ii) fails, refuses or neglects to conform materially to any of the terms and conditions of this Agreement, and fails to remedy any such default within thirty (30) days of the deemed receipt, pursuant to Section 15.1 hereof, of a written notice from any other Shareholder giving details of such default; or (iii) has all or any portion of its Shares of the Corporation realized upon by an encumbrancer.
- (b) The Shareholders may unanimously agree to waive the provisions of this Article 12 with respect to any Shareholder that would otherwise have been deemed to withdraw from the Corporation pursuant to Section 12.1(a)

12.2 **Purchase of Shares on a Shareholder's Withdrawal from the Corporation:** In the event that a Shareholder is deemed to have withdrawn from the Corporation pursuant to the provisions of Section 12.1(a) hereof and the Shareholders have not agreed to waive the application of this Article 12 in accordance with Section 12.1(b), the Corporation irrevocably agrees to purchase, on the expiry of the ninety (90) day period following the occurrence of such event, all and not less than all of the Shares of the Shareholder which is deemed to have withdrawn from the Corporation (hereinafter in Section 12.2 referred to as the "**Withdrawing Shareholder**") at the Share Purchase Price. The closing of the sale of the Shares of the Withdrawing Shareholder to the Corporation shall take place at the offices of the Corporation at the address designated in Section 15.1 hereof at 10:00 in the morning (Toronto time) on the first Business Day following the expiry of the aforesaid ninety (90) day period. The Share Purchase Price, determined pursuant to Section 12.4 hereof, shall be paid at such closing in Canadian dollars. In the event that the Corporation is not, at the time of such purchase of Shares, capable of fulfilling its obligations to pay for such Shares, either because it cannot do so in compliance with the OBCA, or other Applicable Law to the same effect, the sale of such Shares to the Corporation shall be completed with the balance of the Share Purchase Price for such Shares to be paid by the Corporation as soon as it is lawfully able to do so.

12.3 **Sale of Shares on Deemed Withdrawal from the Corporation:**

- (a) The Withdrawing Shareholder hereby irrevocably offers to sell all of its Shares to the Corporation at a price per Share (hereinafter in this Article 12 the "the Share Purchase Price") determined in the manner provided in Section 12.4 hereof and Schedule A hereto.
- (b) In all of the circumstances provided in Section 12.1(a), the remaining Shareholders shall have the right to require that the Corporation assign to them the right or obligation of the Corporation to purchase any or all of the Shares of a Withdrawing Shareholder and, pursuant to such assignment, the remaining Shareholders shall have the right to purchase such Shares, provided that in the opinion of tax counsel to the Corporation, the Withdrawing Shareholder will suffer no significant prejudice from an income tax perspective as a result of such Shares being purchased by the remaining Shareholders rather than by the Corporation.

(c) In the event that the remaining Shareholders purchase such Shares, they shall be entitled to purchase them on a Pro Rata basis in proportion to their respective holdings of Shares or in any other proportion as they may choose, and the provisions of Section 12.2 of this Agreement shall apply *mutatis mutandis* provided however, that no Shareholder shall be obliged to purchase any such Shares.

12.4 **Share Purchase Price Determination:** The Share Purchase Price for the purposes of this Article 12 shall mean the fair market value of each Share as determined at the Withdrawal Date. Such Share Purchase Price shall be determined in the manner provided in Schedule A hereto within the sixty (60) days immediately following the Withdrawal Date.

12.5 **Cancellation of Shares:** Upon the acquisition of any Shares by the Corporation pursuant to this Article 12 of this Agreement, such Shares shall be cancelled and shall not be reissued.

ARTICLE 13 - PROVISIONS APPLICABLE TO SALES OF SHARES PURSUANT TO THIS AGREEMENT

13.1 **Application to All Sales:** Except as, or in addition to, what may otherwise be provided in this Agreement, this Article 13 shall apply to any sale of Shares effected pursuant to the provisions of this Agreement.

13.2 **Closing:** The closing of all sales of Shares effected pursuant to this Agreement shall take place at the offices of the Corporation at the address designated in Section 15.1 hereof, at 10:00 in the morning (Toronto time) on the date stipulated, either pursuant to the provisions hereof or pursuant to any agreement executed in connection with any such sale, as the date on which such closing is to occur.

13.3 **Cancellation of Share Certificates:** The President of the Corporation, or such other officer as may be designated by resolution of the directors of the Corporation shall attend all closings of any such sale of Shares and shall deliver to the Corporation for cancellation share certificates evidencing Shares which are to be sold and shall take custody of new share certificates, if any, issued in replacement of such cancelled share certificates so that at all times the Corporation shall have custody of share certificates representing all of the Shares.

13.4 **Resignation of Seller's Nominees:** At the closing of any sale of Shares, the Shareholder selling its Shares shall cause to be delivered to the Corporation signed resignations of its nominees as directors of the Corporation, and shall assign and transfer to the purchaser of such Shares, all of its right, title and interest in such Shares.

13.5 Transfer Taxes and Other Tax Impacts of a Proposed Sale:

- (a) In the event that any proposed sale or transfer of Shares would result or results in tax or an amount in respect of payments in lieu of tax being exigible from the Corporation or any Shareholder other than the Shareholder selling its Shares (the “**Non-Selling Shareholder(s)**”), whether transfer tax, income tax, capital tax or other tax (and including any taxes or related expenses resulting from the Corporation no longer being tax exempt pursuant to Section 149(1)(d.6) of the *Income Tax Act* (Canada)), all such tax and expenses shall be an expense to the purchaser which shall indemnify the Corporation with respect thereto, and notwithstanding any other provision of this Agreement to the contrary, the proposed sale or transfer shall not be completed unless all such tax and expenses of the Corporation or any Non-Selling Shareholder are first paid in full by the purchaser ; provided that if a proposed sale or transfer is pursuant to the Article 11 Put Option or the Article 12 Deemed Withdrawal, any eligible tax is payable by the Selling Shareholder and the provisions above shall apply *mutatis mutandis*.
- (b) A Shareholder selling Shares to any Person shall, as required by the Electricity Act or any other Applicable Law, pay all transfer taxes payable under the Electricity Act in respect of such sale such that the sale shall not be void.

13.6 Additional Provisions: Loans, Guarantees: In conjunction with any sale of all Shares:

- (a) if the Shareholder selling all of its Shares is indebted to the Corporation, the Corporation may, at its option, require such Shareholder to repay in full all indebtedness which it owes to the Corporation on or before the closing of such sale of Shares;
- (b) if the Corporation is indebted to the Shareholder selling all of its Shares, the Shareholder selling Shares may, at its option, require the Corporation to repay in full all indebtedness which it owes to such Shareholder on or before the closing of such sale of Shares; and
- (c) if the Shareholder selling all of its Shares has provided a guarantee, letter of credit, security or other financial assistance to the Corporation, the Corporation shall use its commercially reasonable efforts to replace or release such guarantee, letter of credit, security or other financial assistance within ninety (90) days after the closing of such sale of Shares.

ARTICLE 14 - NON-COMPETITION AND CONFIDENTIALITY

- 14.1 Non-Competition: During the period commencing as of the date of this Agreement and terminating on the expiry of the twelve (12) months following the date on which a Shareholder:

- (a) is deemed to withdraw from the Corporation, pursuant to Section 14.1 of this Agreement; or
- (b) sells all of its Shares in accordance with this Agreement,

such Shareholder shall not, and shall use its commercially reasonable efforts to ensure that its shareholders do not, individually or in partnership or in conjunction with any Person, as principal, agent, shareholder, consultant or otherwise, directly or indirectly, carry on or be engaged in, or advise, acquire an interest in, or permit its name or any part thereof to be used or employed by an association, syndicate or corporation engaged in or concerned with or interested in, the business of distributing electricity as regulated by the OEB unless the consent of the other Shareholders has first been obtained.

- 14.2 **Necessary Covenants:** Each Shareholder hereby confirms that all restrictions in this Article 14 are reasonable and valid, that they are necessary for the protection of the Corporation's legitimate interests and that they do not unduly affect their earning capacity, and waive all defences to the strict enforcement thereof.
- 14.3 **Confidential Information:** The Shareholders hereby acknowledge that they have had and will have access to confidential information and trade secrets concerning the Business, the Corporation, and the Corporation's Affiliates (as defined in the OBCA), if any, and their customers and suppliers (hereinafter in this Article 14 referred to as the "Information") and they each undertake and agree that they shall not, and their Controlling Shareholder shall not, directly or indirectly, use, disclose or divulge to any Person or other entity any of the Information otherwise than in the Ordinary Course of Business of the Corporation, and its Affiliated Bodies Corporate and as may be required by Applicable Law or order of any Governmental Authority.
- 14.4 **Survival of Obligations:** The obligations and covenants in this Article 14 shall survive the termination of this Agreement.

ARTICLE 15 - NOTICES

- 15.1 **Notices:** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as provided below. Any such notice or other communication, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand, shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section 11.1. Notices and other communications shall be addressed as follows:

- (a) in the case of PWPI:

4548 Ontario Street
Unit 2
Beamsville, ON L0R 1B5

Attention: President
Fax No.: 905-563-0838

- (b) in the case of NFHC:

7447 Pin Oak Drive
P.O. Box 120
Niagara Falls, ON L2E 6S9

Attention: President
Fax No.: 905-356-0118

- (c) in the case of the Corporation:

7447 Pin Oak Drive
P.O. Box 120
Niagara Falls, ON L2E 6S9

Attention: President
Fax No.: 905-356-0118

Notwithstanding the foregoing, any notice of arbitration permitted to be given by any party pursuant to or in connection with any arbitration procedures in Section 16.2 may only be delivered by hand. Normal communications during the arbitration process itself may be delivered by facsimile, regular mail or by hand-delivery. The failure to send or deliver a copy of a notice to counsel shall not invalidate any notice given under this Section 15.

ARTICLE 16- DISPUTE RESOLUTION

- 16.1 **Disputes:** Each Shareholder shall appoint one or more representatives who shall be responsible for administering this Agreement on its behalf and for representing its respective interests in disputes relating to this Agreement. Any dispute between Shareholders relating to this Agreement that is not resolved between such representatives within ten (10) Business Days of a date that a Party notifies the other Party of such dispute shall be referred by the Parties' representatives in writing to the senior management of each Shareholder for resolution. Such senior management shall use good faith efforts to resolve the dispute for a period of up to ten (10) Business Days.
- 16.2 **Arbitration:** If a dispute is not resolved by the procedure set forth in Section 16.1 above, such dispute may, by any Party, be referred to and resolved by arbitration by a single arbitrator in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), subject to the following modifications and additions:

- (a) The arbitration shall take place in the Province of Ontario, and shall be conducted in English;
- (b) The arbitration shall be conducted by a single arbitrator having no financial, business or personal interest in the outcome of the arbitration. The arbitrator shall be appointed jointly by agreement of the parties to such dispute. In the event the parties to such dispute are unable to agree on the appointment of the arbitrator within ten (10) days after notice of a demand for arbitration is given by a party and agreed to by the other parties to such dispute, then the arbitrator shall be selected pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).
- (c) The arbitrator shall have the authority to award any remedy or relief that a court could order or grant in accordance with this Agreement including, without limitation, specific performance of any obligation, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.
- (d) The arbitrator shall have sole and exclusive jurisdiction to examine into, hear and determine all matters and questions of fact and law in respect of which any powers or authority has been conferred upon the arbitrator, including questions of jurisdiction. The arbitral award shall be in writing, stating the reasons for the award and shall be final and conclusive and is not open to appeal, question or review in any court and any determination by the arbitrator made under this Article is hereby ratified and confirmed and is binding upon all persons. No proceedings by or before the arbitrator shall be restrained by injunction, prohibition or other process or proceeding in any court, or are removable by certiorari or otherwise into any court.

ARTICLE 17 - MISCELLANEOUS

- 17.1 **Termination:** This Agreement shall terminate upon (a) the written agreement of all the Parties hereto to this effect, (b) the bankruptcy, receivership or dissolution of the Corporation, or (c) the ownership of all the Shares of the Corporation by one Shareholder.
- 17.2 **Successors and Assigns:** This Agreement shall be binding upon, and enure to the benefit of, the Parties hereto and their respective successors and permitted assigns.
- 17.3 **Assignment:** Except as specifically provided in this Agreement, none of the Parties hereto may assign its rights or obligations under this Agreement without the prior written consent of all of the other Parties hereto.
- 17.4 **Time is of the Essence:** Time shall be the essence of this Agreement in all respects.
- 17.5 **Further Assurances:** Each Party hereto shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and matters in

connection with this Agreement that the other Parties may reasonably require, for the purposes of giving effect to this Agreement.

17.6 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or telecopied form and the Parties shall accept any signatures received by a receiving telecopy machine as original signatures of the Parties; provided, however, that any Party providing its signature in such manner shall promptly forward to the other Parties an original of the signed copy of this Agreement which was so telecopied.

17.7 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties agree that the courts of Ontario shall have exclusive jurisdiction to determine all disputes and claims arising under or pursuant to this Agreement.

17.8 **Amendments and Waivers:**

(a) No amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by all of the Parties hereto.

(b) No waiver of any breach of any provision of this Agreement shall be effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided in the written waiver, shall be limited to the specific breach waived.

17.9 **Severability:** If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day first above written.

NIAGARA FALLS HYDRO HOLDING CORPORATION

By: _____
Name:
Title:

By: _____
Name:
Title:

PENINSULA WEST POWER INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

NIAGARA PENINSULA ENERGY INC.

By: _____
Name:
Title:

By: _____
Name:
Title:

[EXECUTION PAGE TO SHAREHOLDERS AGREEMENT]

Privileged and Confidential

SCHEDULE A

VALUATION METHOD

In this Schedule, the vendor and the purchaser of the Shares being sold pursuant to Article 11 or Article 12 of this Agreement are called the "Vendor" and the "Purchaser", respectively.

Negotiation. If the value of the Shares must be established pursuant to any provision of this Agreement, then the Vendor and the Purchaser shall negotiate honestly and in good faith to agree upon the fair market value of the Shares and such value as the parties may agree upon shall be deemed to be the fair market value of these shares for all purposes of this Agreement.

Failure to Agree. If the Vendor and the Purchaser do not agree upon the fair market value of the Shares on or before the 20th Business Day after the date on which the obligation to sell or purchase Shares arises under this Agreement, then the value of the Shares shall be determined in accordance with the following provisions:

- (a) the Vendor and Purchaser shall agree on the choice of an independent business valuator who deals at Arm's Length with both the Vendor and Purchaser and has experience in valuing businesses similar to the business carried on by the Corporation ("Valuator") within a further ten (10) days; provided that if the Vendor and Purchaser do not agree on the choice of a Valuator as specified above, either party may apply to a single Judge of the Ontario Superior Court of Justice who will appoint a Valuator;
- (b) the business valuator so selected shall be the "Valuator" for the purposes of this Agreement and shall proceed to determine the fair market value of all of the Shares being sold in accordance with the provisions of this Schedule A.

Valuation by Valuator. The Valuator agreed upon or selected in accordance with this Schedule A to determine the fair market value of the Shares being sold shall act as a business valuator and not as an arbitrator or umpire. The Valuator shall apply such business valuation principles as the Valuator deems appropriate. The Valuator may consult such other expert valuers as it considers advisable. The fair market value of the Shares shall be determined without regard for any restrictions applying to the transfer of Shares. The fees and disbursements of the Valuator shall be borne equally by the Vendor and the Purchaser.

Valuation Conclusive. The determination of the value of the Shares being sold pursuant to this Agreement in accordance with this Schedule A, whether based upon the agreement of the Vendor and the Purchaser or the determination by the Valuator, shall be conclusive and binding upon the Vendor and the Purchaser, and there shall be no appeal from the determination.