



CONNECTION IMPACT ASSESSMENT STUDY AGREEMENT

This connection impact assessment study agreement is made this _____ day of _____, 20_____.

BETWEEN

ENWIN Utilities Ltd.
(“ENWIN”)

AND

(the “Connection Applicant”)

WHEREAS:

- A. The Connection Applicant proposes to establish a new or modify an existing connection to ENWIN’s distribution system for a _____(fuel) generator with a nameplate capacity of _____kW located at _____;
- B. The Connection Applicant has complied and will continue to comply with all relevant statutes and regulations, including the Distribution System Code, and has provided to ENWIN the Deposit; and
- C. ENWIN has agreed to complete the Connection Impact Assessment upon the terms and conditions provided herein;

NOW THEREFORE, in consideration of the mutual covenants set forth herein and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

DEFINITIONS & INTERPRETATION

1. **Definitions.** In this Agreement, capitalized terms shall have the meaning provided in the Distribution System Code or below, as applicable:
 - a. **“Agreement”** means this Agreement, including the Schedules to this Agreement, as such may be amended from time to time;
 - b. **“Code”** means the *Distribution System Code*, the code of standards and requirements issued by the OEB on June 27, 2007, as it may be amended, revised or replaced in whole or in part from time to time.

- c. **“Confidential Information”** means:
 - i. the terms of the Agreement and the operations and dealings under the Agreement;
 - ii. all information disclosed by a party to the other party under the Agreement or in negotiating the Agreement which by its nature is confidential to the party disclosing the information, including, but not limited to, design and system specifications of ENWIN’s distribution system; and
 - iii. all interpretative reports or other data generated by a party that are based in whole or in part on information that is made Confidential Information by clauses (i) and (ii).
- d. **“Deposit”** means the deposit required by ENWIN against which the costs and expenses of the Connection Impact Assessment will be debited as set out in Schedule 3.
- e. **“Good Utility Practices”** has the meaning set forth in the Code.
- f. **“HST”** means the Harmonized Sales Tax under the Excise Tax Act or any similar or replacement tax.
- g. **“Party”** means a party to this Agreement and **“Parties”** means every party.
- h. **“Proposal”** means the initial written request by the Connection Applicant to ENWIN to assess the impact of a new or modified connection by the Connection Applicant to ENWIN’s distribution system as particularized in Schedule 1.
- i. **“Connection Impact Assessment”** means the study performed by ENWIN or its consultants to determine the possible consequences and the necessary work to be performed in relation to ENWIN’s distribution system and the Transmitter’s facilities, which would arise from the acceptance of the Connection Applicant’s Proposal.
- j. **“Transmitter”** means Hydro One Networks Inc.

2. **Interpretation.** For the purpose of interpreting this Agreement:

- a. words importing the singular include plural and vice versa;
- b. words importing a gender include both male and female;

- c. when italicized, other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
 - d. the expression “person” includes a natural person, any company, partnership, trust, joint venture, association, corporation or other private or public body corporate, and any government agency or bond politic or collegiate;
 - e. a reference to a thing includes a part of that thing;
 - f. and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expression refer to this Agreement and not to any particular section or other portion of this Agreement;
 - g. a reference to an article, section, provision or schedule is to an article, section, provision or schedule of this Agreement;
 - h. a reference to any statute, regulation, proclamation, Order in Council, ordinance, by-law, resolution, rule, order or directive, includes all statutes, regulations, proclamations, Orders in Council, ordinances, by-laws or resolutions, rules, orders, or directives varying, consolidating, re-enacting, extending or replacing it and a reference to a statute includes all regulations, proclamations, Orders in Council, rules and by-laws of a legislative nature issued under that statute;
 - i. a reference to a person includes that person’s heirs, executors, administrators, successors and permitted assigns;
 - i. a reference to sections of this Agreement a reference to sections of this Agreement or to the Distribution System Code separated by the word “to” (i.e. “sections 1.1 to 1.4”) shall be a reference to sections inclusively; and
 - ii. the expression “including” means including without limitation, the expression “includes” means includes without limitation and the expression “included” means included without limitation.
3. **Headings.** The division of this Agreement into articles and sections and the insertion of headings are for the convenience of reference only and shall not affect the interpretation of this Agreement, nor shall they be construed as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular article, section subsection, clause, provision, part or schedule.

4. **Distribution System Code.** In the event of any inconsistency between this Agreement and the Code, the Code shall prevail to the extent of the inconsistency.

TERM & CONDITION

5. This Agreement commences upon the occurrence of the latest event of the following:
 - a. The Connection Applicant having paid the Deposit;
 - b. The Parties both executing this Agreement; or
 - c. The Connection Applicant having provided all of the information required in Schedule 1 – Connection Application Form.
 - d. This Connection Impact Assessment Study Agreement is revoked by ENWIN in the event that the Connection Applicant fails to accept the Agreement within sixty (60) days of the date hereof.
6. **Termination Connection Applicant.** The Connection Applicant may terminate this Agreement, at any time, by giving written notice to ENWIN, and this Agreement shall terminate upon receipt by ENWIN of the said notice. Upon receipt of such notice, ENWIN will stop the work in an orderly manner and the Connection Applicant shall be responsible for all costs incurred prior to the orderly cessation of the work.
7. **Termination by Notice.** ENWIN may terminate this Agreement by giving notice in writing to the Connection Applicant, where ENWIN deems that the Connection Applicant or anyone acting on behalf of the Connection Applicant has or is likely to breach this Agreement in a material way, or where ENWIN reasonably believes that the continuation of the Connection Impact Assessment has become impractical.
8. **Expenses and Costs.** In the event of termination, the Connection Applicant shall pay all previously invoiced amounts within ten (10) days of the date of withdrawal or termination, and all subsequently invoiced amounts for expenses and costs incurred prior or in relation to the termination, but not yet invoiced, within ten (10) days of the date of invoice. The Connection Applicant acknowledges and agrees that its obligation to pay expenses and costs shall be in addition to any other remedies at law or equity which ENWIN may have against the Connection Applicant with respect to the withdrawal by the Connection Applicant or the termination of this Agreement.

9. **Termination by Completion.** This Agreement shall terminate on the date on which ENWIN delivers the final report of the results of the completed Connection Impact Assessment associated with this Agreement.
10. **Delivery of the Report.** The delivery by ENWIN of the report to the Connection Applicant does not oblige ENWIN to enter into any further agreements with the Connection Applicant, and shall not be construed as acceptance by ENWIN of the Proposal, as modified or amended, by the Connection Applicant.
11. **No Obligation to Remit Study or Other Documentation.** Upon withdrawal or termination by notice, ENWIN shall not have any obligation to provide the Connection Applicant with any information or documentation pertaining to or comprising, in whole or in part, the Connection Impact Assessment associated with this Agreement, including any study or report relating thereto.
12. **Compliance with the Code.** The Connection Applicant acknowledges it is familiar with the requirements of the Code and hereby agrees to be bound by and to comply with all provisions of the Code to the extent that the rules therein are applicable to the Connection Applicant.

COSTS AND SCOPE OF THE CONNECTION IMPACT ASSESSMENT

13. **Scope of Connection Impact Assessment.** Annexed to this Agreement, as Schedule 2 is a description of the initial scope of the Connection Impact Assessment associated with the Connection Applicant's Proposal.
14. **Liability for Costs and Expenses.** The Connection Applicant hereby irrevocably and unconditionally agrees:
 - a. To pay all costs and expenses, including any applicable interest and taxes, related to the Connection Impact Assessment, as invoiced by ENWIN including:
 - i. all internal costs incurred by ENWIN, including overhead as determined by ENWIN based upon its usual practice in billing third parties for work performed by employees of ENWIN;
 - ii. all costs and expenses of the Transmitter or IESO as invoiced to ENWIN; and
 - iii. all costs and expenses related to external consultants retained by ENWIN and invoiced to ENWIN.
 - b. That in the event that the Ontario Energy Board requires any analysis beyond the initial scope of work as described in Schedule 2 to this

Agreement, the Connection Applicant hereby irrevocably and unconditionally agrees to pay all costs and expenses related to this further analysis, including the costs of any participation by ENWIN in proceedings before the Ontario Energy Board.

- c. That in the event that ENWIN determines that further studies, analysis and/or documentation is required in respect to the Connection Impact Assessment beyond the initial scope of work as described in Schedule 2 to the is Agreement, ENWIN shall notify the Connection Applicant, prior to the preparation of such further study, analysis and/or documentation. If the Connection Applicant does not give a notice of withdrawal or termination as provided by subsection 6 within 10 days, the Connection Applicant thereby irrevocably and unconditionally agrees to pay all costs and expenses related to the preparation of such further study, analysis and/or documentation.
 - d. In the event that the initial Proposal is modified or amended, the Connection Applicant hereby irrevocably agrees to pay, in addition to all costs and expenses in relation to the initial Proposal, all additional costs and expenses in relation to the modification or amendment to the initial Proposal.
15. **Payment of Invoices.** In addition to the payment of the Deposit, the Connection Applicant hereby agrees that it shall pay to ENWIN all amounts owing under any invoice submitted to it by ENWIN pursuant to this Agreement, not later than thirty (30) days after the date on which the said invoice is sent or delivered, and acknowledges and agrees that such amounts may, without prejudice to any other remedy available at law, be recovered from the Connection Applicant by ENWIN.
16. **Refund of Deposit.** Where, upon termination of this Agreement, ENWIN determines that the aggregate amount invoiced or to be invoiced by ENWIN, in connection with the Connection Impact Assessment, is less than the Deposit, ENWIN shall refund, without payment of interest, to the Connection Applicant that amount exceeding that aggregate amount.
17. **No Stay of Payment Obligation.** The Connection Applicant hereby agrees that it shall pay to ENWIN the amounts referred to in section 14, notwithstanding any dispute or dispute resolution process that may be initiated by the Connection Applicant in respect to this Agreement.
18. **Notice of Cost in Excess of Deposit.** In the event that ENWIN reasonably expects the costs and expenses referred to in this Agreement will exceed the amount of the Deposit by more than 20% of the Deposit, ENWIN shall promptly invoice the Connection Applicant of the amount by which it reasonably expects those costs and expenses to exceed the Deposit, and the Connection Applicant shall forthwith pay that excess amount to ENWIN as a further deposit.

19. **Revisions.** Should ENWIN have to re-perform all or any part of the Work and/or have the IESO or Transmitter re-perform work (the “Work Revisions”) as a consequence of any of the following during the term of the Agreement:
- a. the Connection Applicant making changes to the Proposed Project;
 - b. the Connection Applicant making changes to any of the information provided by the Connection Applicant as described above under the heading “Information Requirements”;
 - c. where applicable, any report or requirement of the Transmitter in respect of the Project;
 - d. where ENWIN determines, in its sole judgment, that the System Impact Assessment will have a material impact on the Connection Impact Assessment in respect of the Project; or
 - e. where applicable, the IESO making any changes to the System Impact Assessment performed for or in respect of the Project.
20. **System Impact Assessment.** Where applicable, the Connection Applicant shall obtain from the IESO the System Impact Assessment in respect of the Project. The Connection Applicant shall be responsible for paying the IESO for the System Impact Assessment. The Connection Applicant shall also be responsible for paying ENWIN in respect of any amount payable by ENWIN to the IESO or the Transmitter in respect of the Project or any revision to the Project.

INFORMATION AND CONFIDENTIALITY

21. **Obligation to Provide Information.** The Connection Applicant hereby agrees to provide ENWIN with such information and documentation as ENWIN may reasonably request for the purposes of this Agreement within the time noted in the request or may otherwise be agreed by the Parties.
22. **Failure to Provide Information.** The Connection Applicant hereby acknowledges and agrees that the failure to provide information reasonably required by ENWIN within the time period agreed to by the Parties shall be deemed to constitute a withdrawal as set out in section 6.
23. **Disclosure.** The Connection Applicant hereby agrees that ENWIN may disclose to the Transmitter and/or External Consultants such information and documentation as may be reasonably necessary for the purposes of the Connection Impact Assessment.

24. **Ownership and Confidentiality.** The Connection Applicant acknowledges and agrees that all information and documentation, including any reports or studies, in whatever form or format, generated for the purposes of the Connection Impact Assessment are and shall remain the property of ENWIN. Subject to section 25, the Connection Applicant acknowledges and agrees that it will not disclose any information or documentation, including any reports or studies, in whatever form or format, to any third party without the written authorization of ENWIN. Further, the Connection Applicant acknowledges and agrees that any unauthorized disclosure by the Connection Applicant, through an act or omission, or by acquiescence, is a breach of this Agreement and constitutes irreparable harm to ENWIN for which ENWIN is entitled, in addition to any other remedies in law or equity, to an immediate permanent injunction to restrain further breaches and that ENWIN may apply for such injunction, without notice to the Connection Applicant.
25. **Publication.** The Connection Applicant hereby consents to the publication by ENWIN of any report or study pertaining to the Connection Impact Assessment.
26. **MFIPPA.** The Connection Applicant hereby acknowledges that ENWIN is subject to the Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M-56.
27. **Intellectual Property.** The Connection Applicant acknowledges all right, title and interest, including copyright ownership, to all information and material of any kind whatsoever (including, but not limited to the work product developed as part of the Work) that may be developed, conceived and/or produced by ENWIN during the performance of the Agreement is the property of ENWIN, and the Connection Applicant shall not do any act that may compromise or diminish ENWIN's interest as aforesaid.

REPRESENTATIONS AND WARRANTIES

28. **Representation and Warranties of ENWIN.** ENWIN hereby represents and warrants as follows to the Connection Applicant, and acknowledges and confirms that the Connection Applicant is relying on such representations and warranties:
- a. that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or government action;
 - b. that this Agreement constitutes a legal and binding obligation on ENWIN, enforceable against ENWIN in accordance with its terms; and
 - c. is a registrant for Harmonized Sales Tax with reference number 867120586 RT0001.

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

30. **Representation and Warranties of the Connection Applicant.** The Connection Applicant hereby represents and warrants as follows to ENWIN, and acknowledges and confirms that ENWIN is relying on such representations and warranties:

- a. that the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or government action;
- b. that this Agreement constitutes a legal and binding obligation on the Connection Applicant, enforceable against the Connection Applicant in accordance with its terms;
- c. that the Connection Applicant is the owner of the connection for which the Proposal has been made;
- d. that all information provided by the Connection Applicant is to the best knowledge of the Connection Applicant true and accurate;
- e. further, the Connection Applicant represents and warrants that the proposal(s) submitted by it to ENWIN for the purpose of the Connection Impact Assessment comply with the Distribution System Code;
- f. that any information or documentation, including the reports or studies, do not constitute representation to the Connection Applicant or any third party;
- g. is a registrant for Harmonized Sales Tax with reference number _____.

31. ENWIN and the Connection Applicant shall perform their respective obligations outlined in the Agreement in a manner consistent with Good Utility Practice and in compliance with all Applicable Laws.

LIABILITIES AND INDEMNIFICATION

32. **Release of Liability.** Subject to section 33, the Connection Applicant hereby releases, remises and forever discharges ENWIN, its directors, officers, employees and agents from all actions, causes of action, suits, debts, dues,

accounts, bonds, covenants, claims and demands whatsoever which the Connection Applicant now has or may hereafter have by reason of or in any way arising from this Agreement and its performance.

33. **Liability.** ENWIN shall only be liable to the Connection Applicant for damages that arise directly out of the gross negligence or the willful misconduct of ENWIN in meeting its obligations under this Agreement. Notwithstanding the foregoing, ENWIN shall not be liable under any circumstances whatsoever for any loss of profits or revenues, business interruption losses, loss of contract or loss of goodwill, or for any indirect, consequential, incidental or special damages, including but not limited to punitive or exemplary damages, whether any of the said liability, loss or damages arise in contract, tort or otherwise. In any event, the total liability of ENWIN to the Connection Applicant for any claim or claims for damages will not exceed the amounts paid by the Connection Applicant FOR THE WORK PERFORMED BY ENWIN under the terms of this Agreement. This Section 33 shall survive the termination of this Agreement.
34. **Indemnification.** The Connection Applicant hereby agrees to indemnify and save harmless ENWIN, its directors, officers, employees and agents from any and all debts, liabilities or other obligations, however arising, in connection with this Agreement and its performance for which ENWIN may become liable, forthwith upon written demand, together with all related costs, including legal fees and disbursements on a solicitor and client basis, interest and penalty charges.

MISCELLANEOUS

35. **Amendment.** No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.
36. **Assignment.** The Connection Applicant may not assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement without the prior written consent of ENWIN. ENWIN may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement on notice to the Connection Applicant.
37. **Successors and Assigns.** The Agreement shall inure to the benefit of, and be binding on, the Parties and their respective heirs, administrators, executors, successors and permitted assigns.
38. **Further Assurances.** Each Party shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.

39. **Waiver.** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver will be inferred or implied by any failure to act or by the delay in acting by a Party in respect to any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance, whether of the same or any other nature.
40. **Severability.** Any provision of this Agreement that is found to be invalid or unenforceable by a court of competent jurisdiction shall, as to that geographic jurisdiction, be ineffective to the extent of the invalidity or unenforceability and shall be deemed severed from the remainder of this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.
41. **Notices.** Any notice, demand, consent or request or other communication required or permitted to be given or made under this Agreement shall be made in writing and sent to the representative of the Party at the address set out in Schedule 3.
42. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the applicable laws of Canada.
43. **Attornment.** The Parties hereby attorn to the exclusive jurisdiction of the courts of Ontario in any action or proceeding arising out of or relating to this Agreement or for the recognition and enforcement of any judgment. This section shall not preclude the Parties from voluntarily agreeing to any method of alternative dispute resolution, and the Parties hereby agree to consider such methods prior to initiating any action or proceeding in the courts of Ontario.
44. **Survival.** The following provisions shall survive termination of this Agreement:
- a. any obligation of the Connection Applicant to pay ENWIN;
 - b. sections 14, 15, 24, 25, 31, 32, 33, 34;
 - c. the confidentiality provisions; and
 - d. the liability and indemnity provisions.
45. **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 faxed form and the Parties adopt any signatures received by receiving facsimile machine as original signature of the Parties.

46. **Force Majeure.** Except in respect of a payment obligation, if either Party hereto is prevented from or delayed in performing any of its obligations hereunder by reason of a Force Majeure Event (including act of God, acts of a public enemy, wars, blockades, civil disturbances or any decree of a court or regulatory body of competent jurisdiction), the Party thereby prevented or delayed shall give notice of such event to the other party, and shall be excused from performance of the obligation during the currency of such event.

47. **No Partnership.** This Agreement does not and shall not be construed to create or establish a partnership, agency, joint venture or any other relationship between the parties hereto, nor constitute either party as an agent of the other.

48. **Entire Agreement.** This Agreement, the Schedules referred to herein, and any amendments made in accordance with section 35 contain the entire understanding of the parties hereto with regard to the subject matter contained herein and therein, and supersede all prior agreements or understandings between or among any of the parties hereto. The parties acknowledge and agree that they are not relying on any representations made by the other party that are not contained herein.

IN WITNESS WHEREOF the Parties have, by their duly appointed and authorized representatives, executed this Agreement, on this ____ day of _____, 20__.

For: Connection Applicant

By: _____

Name: _____

Title: _____

I have authority to bind the Corporation

By: _____

Name: _____

Title: _____

I have authority to bind the Corporation

For: ENWIN

By: _____

Name: James Brown

Title: Chief Operating Officer - Hydro

We have authority to bind the Corporation

By: _____

Name: Garry Rossi

Title: President & CEO

We have authority to bind the Corporation

SCHEDULE 1
Application Information

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SCHEDULE 2

Scope of Work

1. ENWIN will conduct and provide a Connection Impact Assessment to determine the technical feasibility of the proposed connection arrangement for the Project. The Connection Impact Assessment will review the impact of the connection of the Project on ENWIN's distribution facilities and the Transmitter, if applicable. The Connection Impact Assessment may also include the results of any study performed by the Transmitter or an adjacent and impacted distributor, where applicable.
2. ENWIN will review the *Connection Applicant supplied* detailed Single Line Diagram (SLD) and provide comments with regard to interface connection items.
3. ENWIN will advise the Connection Applicant of site-specific requirements, for each of the alternative connections that are identified by the Connection Impact Assessment.
4. ENWIN will describe the necessary modifications to ENWIN's distribution facilities and the Transmitter's facilities based on ENWIN' review of the Project in order to permit the connection of the Generation Facility.

SCHEDULE 3
Deposit

All amounts provided are estimates and the Connection Applicant acknowledges that invoicing will be based upon actual costs incurred by ENWIN Utilities.

Item	Amounts
Connection Impact Assessment (ENWIN)	
Connection Impact Assessment (Hydro One)	
System Impact Assessment (IESO)	
Transmitter Costs	
HST	
Deposit	_____

**SCHEDULE 4
Notice**

ENWIN Utilities Ltd.
Address: 4545 Rhodes Dr
P.O. Box 1625
Windsor, ON N8W 5T1

Attention: Corporate Secretary

Email: secretary@enwin.com

Fax: (519) 566-1804

Connection Applicant

Address: _____

Attention: _____

Email: _____

Fax: _____

A notice, demand, consent, request or other communication shall be deemed to have been made as follows:

- a. where given or made by courier or other form of personal delivery, on the date of receipt;
- b. where given or made by registered mail, on the sixth day following the date of mailing;
- c. where given or made by facsimile, on the day and at the time of transmission as indicated on the sender's facsimile transmission report; and
- d. where given or made by electronic mail, on the day and at the time when the notice, demand, consent, request or other communication is recorded by the sender's electronic communications system as having been received at the electronic mail destination.