

STEAM AGREEMENT

THIS AGREEMENT is dated as of the 1st day of October, 2013.

BETWEEN:

VERESEN ENERGY INFRASTRUCTURE INC. doing
business as LONDON DISTRICT ENERGY ("LDE")

- and -

THE CORPORATION OF THE CITY OF LONDON (together,
the "Customer")

RECITALS

1. LDE operates and maintains the district energy system in London, Ontario (the "System");
2. As part of the operation of the System, LDE sells steam to certain customers; and
3. LDE agrees to provide the Service to the Customer and the Customer agrees to purchase on an exclusive basis the Service from LDE in accordance with the terms and subject to the conditions set forth in this Agreement.

NOW THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I
INTERPRETATION

1.1 Definitions.

For the purposes of this Agreement:

"Affiliate" has the meaning ascribed to it in the *Business Corporations Act* (Ontario).

"Applicable Laws" means (i) applicable federal, provincial or municipal laws, orders-in-council, bylaws, codes, rules, policies, regulations and statutes; (ii) applicable orders, decisions, codes, manuals, interpretation bulletins, judgements, injunctions, decrees, awards, and writs of any court, tribunal, arbitrator, Governmental Authority or other Person having jurisdiction; (iii) applicable rulings and conditions of any license, permit, certificate, registration, authorization, consent and approval issued by a Governmental Authority; and/or (iv) any requirements under or prescribed by applicable common law.

"Commencement Date" has the meaning given to it in Section 2.2(a).

“Contract Capacity” means the maximum amount of Steam to be provided by LDE to the Customer, which will be XXXX pounds per hour of Steam, to a maximum of XXXX pounds per annum, as further set out in Exhibit “A” or such greater amount as may be agreed to by the parties pursuant to Section 8.5.

“Customer’s Meters” has the meaning ascribed to it in Section 8.6(b).

“Customer’s System” means the heating system located at the Premises.

“Energy Transfer System” means the system described in Exhibit “C”, and including, upon construction, any condensate return system.

“Event of Force Majeure” means any cause beyond the reasonable control of and without the fault, negligence or wilful misconduct of the party claiming the Event of Force Majeure including, without limitation, acts of God, fires, floods, storms, hurricanes, strikes, labour disputes, riots, insurrections, acts of war (whether declared or otherwise) that prohibits or restricts the operation of the Energy Transfer System or the ability of LDE to perform its obligations hereunder. Notwithstanding the foregoing, an Event of Force Majeure does not include (i) unavailability of funds or financing, (ii) equipment failure due to normal wear and tear, or (iii) failure to repair and replace equipment in a timely manner consistent with Good Engineering and Operating Practices.

“Excess Capacity” has the meaning ascribed to it in Section 8.5(d)(i).

“Good Engineering and Operating Practices” means any of the practices, methods and activities adopted by a significant portion of the North American district energy industry as good practices applicable to the design, building and operation of district energy facilities of similar type, size and capacity or any of the practices, methods or activities which, in the exercise of skill, diligence, prudence, foresight and reasonable judgment by a prudent operator in light of the facts known at the time the decision was made, could reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, timeliness and Applicable Laws, all in consideration of the heating of office buildings of the size and nature of the office buildings owned by the Customer located on the Lands and their location in London, Ontario, and all on the basis that such practices, methods and activities result in LDE meeting the Steam demands of the Customer, up to the Contract Capacity. Good Engineering and Operating Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather are intended to delineate acceptable practices, methods or acts generally accepted in the North American district energy industry.

“Governmental Authority” means any federal, provincial, regional, municipal or local government or authority or other political subdivision thereof and any entity or person, having jurisdiction exercising executive, legislative, judicial, regulatory or administrative functions of, or pertaining to, government.

“Heat Exchangers” means the heat exchangers located from time to time at the Premises, as designated in Exhibit “C” hereto.

"Lands" means the real property owned by the Customer as described in Exhibit "A".

"Material Adverse Effect" with respect to any party means any change or effect that:

- (a) individually or when taken together with all other changes or effects that have occurred during any relevant period of time before the determination of the occurrence of that change or effect is or is reasonably likely to be materially adverse to the business or operations of that party; or
- (b) materially adversely affects the ability of that party to conduct its business.

"Metering Equipment" means the metering equipment necessary to measure the actual pounds of Steam delivered to the Customer by LDE, such equipment to be installed and maintained by LDE at the Point of Delivery.

"Point of Delivery" means the point at which the Energy Transfer System connects to the Customer's heating system, being where the lines designated as "Steam" enter the Heat Exchangers on the plans attached hereto as Exhibit "C".

"Premises" means the building constructed on the Lands, collectively known as the COLBORNE BUILDING, each having a municipal address of 391 South Street, London, Ontario as further described in Exhibit "A".

"Representative" or **"Representatives"** in reference to a party, means such party's directors, officers, employees, agents and authorized contractors, such party's Affiliates, and all such Affiliates' respective directors, officers, employees, agents and contractors.

"Service" means the delivery of Steam by LDE to the Customer in accordance with the terms and subject to the conditions set forth in this Agreement.

"Service Rates" has the meaning ascribed to it in Section 8.1(a).

"Steam" means pounds of saturated steam having the characteristics set forth in Exhibit "A", as measured at the Point of Delivery.

"System" has the meaning ascribed thereto in the Recitals.

1.2 General.

- (a) **Headings.** The division of this Agreement into Articles, Sections and Exhibits and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The terms **"this Agreement"**, **"hereof"**, **"hereunder"** and similar expressions refer to this Agreement and not to any particular Article, Section or Exhibit or other portion hereof and include any agreement supplemental hereto. Unless something in the subject or context is inconsistent therewith, references herein to Articles, Sections or Exhibits are to Articles, Sections or Exhibits of this Agreement.

- (b) Extended Meanings. In this Agreement words importing the singular number include the plural and vice versa, words importing any gender include all genders and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations and corporations.
- (c) Interest. Unless otherwise indicated, all amounts owing under this Agreement shall bear interest at a rate of one point five percent (1.5%) per month, resulting in a rate of eighteen percent (18%) per annum, following applicable payment and cure periods.
- (d) Exhibits. The following exhibits are incorporated into and form part of this Agreement:
 - Exhibit "A" - Premises, Contract Capacity and Steam Service Specifications
 - Exhibit "B-1" - Service Rates
 - Exhibit "B-2" - Sample Invoice (September 2010)
 - Exhibit "C" - Plans and Equipment
 - Exhibit "C" - Equipment Ownership

ARTICLE II

SUPPLY OF STEAM

2.1 Supply of Steam.

- (a) Subject to the terms and conditions of this Agreement, commencing upon the Commencement Date and continuing thereafter throughout the Term, LDE shall supply the Steam to the Customer's Premises up to the Contract Capacity and the Customer shall accept and purchase from LDE the Steam.
- (b) LDE will exercise its best efforts to provide a uniform and uninterrupted supply of Steam in accordance with Good Engineering and Operating Practices and the terms of this Agreement but nothing contained in this Agreement shall be construed as a guarantee as to the uniformity, reliability or continuity of such Steam supply, except as may otherwise be specifically set out herein.

2.2 Term of the Agreement.

- (a) Subject to earlier termination or renewal in accordance with the provisions hereof, this Agreement shall commence on November 1, 2013 (the "**Commencement Date**") and shall continue until, and including, the October 30, 2016 (the "**Initial Term**").

- (b) LDE shall offer the Customer the option to renew this Agreement for up to three (3) additional ten (10) year periods (each a “**Renewal Term**”). The Initial Term together with each Renewal Term are hereinafter referred to as the “**Term**”. LDE shall provide written notice to the Customer of such option to renew, along with revised Service Rates applicable to the upcoming Renewal Term, no later than eighteen (18) months prior to the expiry of the Initial Term or the then current Renewal Term. At the time that the offer to renew is made by LDE, the parties agree to commence good faith negotiations to determine the renewal terms and conditions applicable to the upcoming Renewal Term within ninety (90) days from the date that the Customer receives the offer to renew from LDE.

ARTICLE III **INFRASTRUCTURE**

3.1 Covenants Relating to Existing Infrastructure.

- (a) The parties acknowledge that existing infrastructure as described in Exhibit “D” has previously been installed in the Premises for the purpose of connecting the Premises to the System and the parties agree that such infrastructure as currently installed is sufficient for such purposes.
- (b) The parties hereby agree to maintain, repair and replace, as necessary and in a manner consistent with Good Engineering and Operating Practices, their respective equipment set out in Exhibit “D” hereto.
- (c) If LDE wishes to replace any part of the Energy Transfer System located on the Premises, LDE should first obtain the written approval of the Customer, such consent not to be unreasonably withheld or delayed.
- (d) The Customer hereby provides licence rights to LDE sufficient to allow for the existence within the Premises of the equipment described in Exhibit “D” hereto, and for access to such equipment and the repair, replacement and maintenance thereof, without charge to LDE.

3.2 Ownership of Existing Infrastructure

The parties acknowledge and agree that LDE owns and is responsible for (subject to any provisions to the contrary set out herein) all of the equipment and components of the Energy Transfer System as shown on Exhibit “C” save and except for the Domestic Hot Water Return and Domestic Hot Water Supply Lines, as set out on Exhibit “C”.

3.3 Ownership of New Infrastructure

- (a) The parties acknowledge and agree that, notwithstanding any physical attachment to the Premises and notwithstanding which party is responsible for the costs of purchase and installation, LDE shall be the owner of the Heat Exchangers, including upon replacement pursuant to Sections 4.2 and 5.2, and is responsible

for the costs of the maintenance thereof. The parties further agree that such equipment shall not be deemed to be fixtures.

- (b) The parties acknowledge and agree that, notwithstanding any physical attachment to the Premises, that the condensate return lines shall be the property of LDE, that they shall not be deemed to be fixtures and that LDE will be responsible for the costs of the maintenance of such lines; the pump associated with such system shall be owned by LDE and LDE shall be responsible for the costs of the maintenance thereof and LDE shall be responsible for the replacement or upgrade costs, and such new or modified pump equipment shall remain the property of LDE.

ARTICLE IV **LDE'S COVENANTS**

4.1 Representations and Warranties of LDE.

LDE hereby represents and warrants to the Customer that:

- (a) it is an entity validly subsisting under the laws of Ontario and has the power to own or lease its property, to carry on its business as now being conducted by it and to enter into this Agreement and to perform its obligations hereunder;
- (b) it has obtained all necessary licences and permits from applicable Governmental Authorities to deliver Steam in accordance with the terms of this Agreement;
- (c) this Agreement has been duly authorized, executed and delivered by LDE and is a legal, valid and binding obligation of LDE, enforceable against LDE by the Customer in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws effecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction; and
- (d) the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement shall not result in the breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or accelerations of any material obligation of LDE applicable under:
 - (i) any contract or obligation to which LDE is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents, or resolutions of the directors and shareholders of LDE;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;

- (iv) any licences, permit, approval, consent or authorization held by the applicable party; or
- (v) any Applicable Law, statute, ordinance, regulation or rule.

4.2 Covenants of LDE.

LDE agrees with the Customer:

- (a) to maintain, repair and keep in good working order the Energy Transfer System, consistent with Good Engineering and Operating Practices, for the purposes provided herein;
- (b) to maintain a water quality and employ necessary chemical treatment of its water, consistent with Good Engineering and Operating Practices, as it determines to be adequate for the normal protection of its System and the Energy Transfer System;
- (c) that it shall not suffer or permit any construction lien to be registered against the Lands and Premises by reason of work, labour, services or material supplied to or for LDE, and if any such construction lien is at any time registered against the Lands, (i) immediately upon notice of such registration LDE shall provide written notice to the Customer and (ii) LDE shall at its sole cost and expense cause the same to be discharged or vacated within ten (10) days after the request from the Customer;
- (d) in the event of a cessation in the supply of Steam to the Premises for any period greater than twenty-four (24) hours, for any reason including an event of Force Majeure, LDE shall not charge to the Customer the Service Rates for the period of such cessation, including both the Energy Charge and the Capacity Charge;
- (e) at the request of the Customer, to provide periodic water testing results detailing the constituents of the water in the Energy Transfer System from a period within the previous three (3) months and to allow and cooperate with the Customer with respect to the Customer's testing of the water entering the Customer's System.

ARTICLE V CUSTOMER'S COVENANTS

5.1 Representations and Warranties of Customer.

The Customer hereby represents and warrants to LDE that:

- (a) it is a corporation validly subsisting under the laws of Ontario and has the corporate power to own or lease its property, to carry on its business as now being conducted by it and to enter into this Agreement and to perform its obligations hereunder;

- (b) it has obtained all necessary licences and permits from applicable Governmental Authorities to carry on business;
- (c) this Agreement has been duly authorized, executed and delivered by the Customer and is a legal, valid and binding obligation of the Customer, enforceable against the Customer by LDE in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency and other laws effecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction;
- (d) it is authorized to grant the rights of use, easements and access contemplated herein; and
- (e) the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement shall not result in a breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the termination, cancellation or accelerations of any material obligation of the customer applicable under;
 - (i) any contract or obligation to which the Customer is a party or by which it or its assets may be bound, except for such defaults or conflicts as to which requisite waivers or consents have been obtained;
 - (ii) the articles, by-laws or other constating documents, or resolutions of the directors and shareholders of the Customer;
 - (iii) any judgment, decree, order or award of any Governmental Authority or arbitrator;
 - (iv) any licences, permit, approval, consent or authorization held by the applicable party; or
 - (v) any Applicable Law, statute, ordinance, rights, regulation or rule.

5.2 Covenants of the Customer.

The Customer agrees with LDE:

- (a) to maintain, in accordance with Applicable Laws and Good Engineering and Operating Practices, all Customer-owned equipment and facilities related to heating the Premises and such other equipment or facilities as may be mutually agreed upon from time to time in writing in a good state of repair, and in working order;
- (b) to use reasonable efforts to ensure that LDE's equipment and facilities located on the Lands or the Premises, including without limitation the Metering Equipment, the isolation valves and the flow control valves and any seal or lock affixed

thereto by LDE, is not tampered with, damaged, modified or otherwise interfered with;

- (c) to ensure that the quantity, condition and quality of Steam supplied by LDE to the Customer is not interfered with (except as agreed in advance by the parties) while within the Customer's System;
- (d) to use reasonable efforts to provide and maintain a continuous and uninterrupted supply of electrical power for the operation of the Metering Equipment and valves forming part of the Energy Transfer System, interconnection to such supply of electrical power to be reasonably proximate to LDE's equipment;
- (e) to maintain a water quality and employ necessary chemical treatment of its water on the Customer's side of the Heat Exchangers as it determines to be adequate for the normal protection of its own equipment. In the event the Customer experiences an inadequate supply of Steam as a result of inadequate water treatment, maintenance or fouling on the Customer's side of the Heat Exchangers and reasonable evidence of such condition is provided by LDE to the Customer, then LDE shall have the right to review the chemical treatment program and to perform additional maintenance to clean the Customer's side of the Heat Exchangers on the date(s) and time(s) as mutually agreed to by the parties and the reasonable cost of such additional maintenance shall be at the expense of the Customer;
- (f) not to directly or indirectly sell, use or otherwise provide any Steam to any person or building outside of the Premises, with the exception that Steam may be resold by the Customer to its tenants (the "**Tenants**") and Steam may be resold by the Tenants to its subtenants ("**Subtenants**") provided that the Tenants and Subtenants occupy the Premises and such resale does not subject LDE to any new or additional governmental rules, regulations or laws. In the case of any such resale, the Customer shall remain liable to LDE for all costs and charges incident to the resale of Steam to the Tenants and Subtenants, including any taxes or other governmental charges. No further resale by the Tenants and Subtenants shall be permitted;
- (g) not to at any time tie into or access LDE's side of the Energy Transfer System;
- (h) to permit the LDE, at LDE's option, to connect a condensate return system to the Energy Transfer System.

ARTICLE VI
REPAIRS AND RIGHTS OF ACCESS

6.1 Repairs.

LDE shall have the right, upon reasonable notice to and upon consultation with the Customer, to disconnect or discontinue the supply of Steam for the purpose of carrying out any connections, necessary repairs or maintenance to the Energy Transfer System including, without limitation, its mains and service pipes. LDE shall use best efforts not to disrupt the Customer and to perform this work when disruption to the Tenants will be minimized, including, to the extent possible, outside of normal business hours. Notwithstanding any other provision of this Agreement, in the case of an emergency (including unsafe or dangerous conditions) as determined by LDE in its sole discretion, LDE may disconnect or discontinue the delivery of Steam to the Premises without prior notice, subject to the requirement to provide temporary Steam herein. LDE shall use its best efforts to reinstate delivery of Steam once the emergency conditions have been addressed.

6.2 Easements and Rights of Way.

- (a) Customer hereby grants to LDE all necessary rights of way, access rights, easements and licenses to construct, install, operate, maintain, repair, replace and remove the Energy Transfer System, Metering Equipment and any other equipment or property owned by LDE on the Premises and the Lands.
- (b) The Customer agrees to execute such other grants, deeds or other documents as LDE may require to enable it to duly record such rights of way and easements.
- (c) Within one (1) year from the expiration or earlier termination of this Agreement, LDE shall remove at LDE's cost and expense all or any part of the Energy Transfer System, which removal shall be affected in a good and workmanlike manner and LDE shall make good any damage caused to the Premises or any part thereof by the installation or removal of the Energy Transfer System, reasonable wear and tear excepted. Unless otherwise agreed to by the parties, if LDE does not remove all or any part of the Energy Transfer System (the "**Remaining Equipment**") from the Premises within one (1) year from the expiration or earlier termination of this Agreement, then the Remaining Equipment shall become the property of the Customer free and clear of all liens, mortgages, charges and security interest of every nature and kind whatsoever ("**Equipment Liens**"), who may, at its sole option, choose to remove and dispose of any or all such Remaining Equipment at the reasonable cost of LDE.
- (d) The rights set out in this Section 6.2 shall survive termination or expiration of this Agreement for a period of one (1) year for purposes of allowing LDE sufficient time to remove all of the Energy Transfer System from the Premises as set out in Section 11.7, and in respect of the obligation of LDE to ensure that any Remaining Equipment is abandoned free and clear of all Equipment Liens, for a period of three (3) years following termination or expiration of this Agreement.

6.3 Access to the Premises.

- (a) Subject to Section 6.3(c), LDE and its officers, servants, employees, agents and contractors may during reasonable times: (i) before the termination or expiry of this Agreement, enter upon the Lands and into the Premises for the purpose of reading meters or for the purpose of constructing, calibrating, inspecting, installing, repairing, altering, replacing, maintaining, removing or disconnecting all or any part of the Energy Transfer System; and (ii) after the termination or expiry of this Agreement, enter into and upon the Lands and the Premises for the purpose of capping and/or removing pipes and equipment and removing all of the Energy Transfer System as contemplated in Section 11.7.
- (b) At the request of LDE, the Customer will grant to LDE an easement for the purpose of delivering Steam to the Premises and permitting LDE to construct, install, operate, maintain, repair and reconstruct and/or use the Energy Transfer System in, on, upon, under, along, through and/or across the Lands, and such easement shall be in a form acceptable to both parties, each acting reasonably.
- (c) LDE and its duly authorized representatives shall have the right to access the Energy Transfer System together with the necessary route through the Premises on a twenty-four (24) hour per day, seven (7) days per week basis, provided that LDE gives the Customer prior notice and uses its best efforts to avoid any disruption to the Tenants.
- (d) In the event of an emergency that requires LDE to access the Energy Transfer System located at any part of the Premises, the parties agree that Section 6.3(c) does not apply (except that LDE will continue to use reasonable efforts to avoid disruption of Tenants, given the circumstances), and the Customer will grant LDE access to the Premises on an immediate basis. LDE agrees that to the extent the Customer's staff may be able to minimize disruption in an emergency, provided the Customer's actions are unlikely to adversely impact the emergency, the Customer may take such action which is reasonable in the circumstances necessary to address or minimize such emergency and the impact to the Premises.

ARTICLE VII **INSURANCE**

7.1 LDE Insurance.

LDE shall, at its expense, obtain and maintain in force throughout the Term of this Agreement commercial general liability insurance for a limit of liability not less than five (5) million dollars (\$5,000,000) per accident or occurrence and five (5) million dollars (\$5,000,000) in the annual aggregate, including personal and bodily injury, property damage, standard non-owned automobile coverage, contractual liability, contingent employer's liability and owner's and contractor's protective insurance coverage. The Customer and its secured lender, (None), or such other lender from time to time, shall be named as additional insureds. Such

insurance shall be primary to any and all other insurance coverage and shall not contribute with similar insurance in effect by the Customer.

7.2 Customer Insurance.

Customer at its sole cost and expense shall at all times maintain the following insurance:

- (a) adequate insurance for loss or damage by (i) fire and all other risks embraced by standard extended coverage endorsements, (ii) by sprinkler leakage, and (iii) from explosion of high pressure steam boiler, air conditioning equipment, pressure vessels, motors or similar equipment; and
- (b) commercial general liability insurance for a limit of liability not less than five (5) million dollars (\$5,000,000) per accident or occurrence and twenty (20) million dollars (\$20,000,000) in the annual aggregate, which shall be extended to cover premise and operations liability, contractual liability, products completed, operations liability, owners/contractors protective liability, non-owned automobile liability.
- (c) The insurance required to be maintained by the Customer in Sections 7.2(a) and 7.2(b) shall name LDE as an additional named insured and shall extend, as appropriate, to the benefit of any lender, mortgagee or bond trustee of LDE during the Term of this Agreement. Such insurance shall be primary to any and all other insurance coverage and shall not contribute with similar insurance in effect by LDE.

ARTICLE VIII SERVICE RATES AND MEASUREMENTS

8.1 Service Rates.

- (a) The Customer shall pay for Steam on the basis of a Capacity Charge and an Energy Charge as described in Exhibit "B-1" (the "**Service Rates**").
- (b) The Customer shall pay all applicable goods and service taxes (including, without limitation, any harmonized sales taxes or "HST") on the amounts payable pursuant to this Agreement.

8.2 Payment and Invoicing.

- (a) Invoices for the Service Rates and any other amounts due hereunder by the Customer to LDE shall be issued by LDE to the Customer on a monthly basis. The amounts due and payable by the Customer shall be paid by the Customer within thirty (30) days of the date on which the invoice is issued.
- (b) Service Rates payable by the Customer to LDE pursuant to this Agreement and not paid when due shall bear interest at a rate of prime plus two percent (2%) per annum from the due date indicated on the invoice up to and including the date that

such outstanding payment is actually received by LDE. No dispute as to payments due hereunder by the Customer shall relieve the obligation of the Customer to pay all undisputed amounts due in accordance with this Agreement.

8.3 Contract Capacity Adjustments.

- (a) If an Event of Force Majeure occurs affecting LDE's ability to provide the Service to the Customer, then payment of any Capacity Charge shall be adjusted based on the period and degree to which Service is curtailed or suspended.
- (b) There shall be no adjustment of, or reduction in, the monthly Capacity Charge payable by the Customer due to the Customer's failure to accept Service during any normal billing period in which LDE was ready and able to supply Steam to the Customer in accordance with the provisions of this Agreement.
- (c) At the written request of the Customer, LDE shall set the existing limiting device restricting the capacity of Steam to a certain level, which restriction shall not be set higher than ~~XXXX~~ pounds per hour, unless authorized by a representative of the Customer that is the General Manager or a representative more senior, subject to Section 8.5.

8.4 Service Rate Adjustments Due to Change In Applicable Laws.

The Service Rates assume a continuation of present Applicable Laws and the administration thereof in substantially the same manner as on the Commencement Date of this Agreement. Should any Applicable Laws, or the administration or interpretation thereof by any Governmental Authority, change in any manner which requires LDE to expend additional capital for labour, fuel, debt service, operating expenses (including the imposition of any new tax, fee or surcharge other than federal, provincial or local taxes based on capital or on net income) or any combination of these factors, LDE shall be entitled to calculate the annual impact thereof and increase its Service Rates to recover such added expense without profit. The calculation of such annual impact on the Customer's Service Rates shall be performed on a pro-rata basis according to the contract capacity of each of LDE's customers. Notwithstanding the foregoing, in the event that a change in Applicable Laws occurs, LDE agrees to use commercially reasonable efforts to minimize or eliminate any adverse effects of such change to the Customer's Service Rates.

8.5 Excess Service Demand.

- (a) The Customer shall have the right, from time to time, to request upon reasonable notice, that LDE increase the Contract Capacity up to ~~XXXX~~ additional pounds per hour. Provided that LDE has available, unutilized and unallocated capacity to produce and distribute Steam, as determined by LDE in its sole discretion, the Customer shall have the right to utilize such available, unutilized and unallocated capacity.
- (b) If the parties agree to increase the Contract Capacity pursuant to Section 8.5(a), then the Customer shall pay an additional pro-rated monthly Capacity Charge for the Excess Capacity delivered by LDE to the Customer for that period.

- (c) LDE shall not be obligated to provide additional capacity and the inability of LDE to deliver additional capacity shall not be a breach of LDE's obligations under this Agreement. LDE, acting reasonably, shall have the right to limit any increase in the Customer's Contract Capacity to the Contract Capacity.
- (d) The Contract Capacity shall be permanently increased to ~~XXXX~~ pounds per hour for the remainder of the Term, and the Contract Capacity described in Exhibit "A" shall be effectively amended to ~~XXXX~~ pounds per hour, upon the occurrence of either of the following events:
 - (i) the Customer utilizes more than ~~XXXX~~ pounds per hour of additional capacity ("**Excess Capacity**") on more than two (2) occasions in a calendar year, with each occurrence required for more than two (2) hours in duration, where the second of such occasions occurs after two (2) business days following receipt by the Customer of an invoice from LDE specifically detailing the initial event in such calendar year where the Customer utilized Excess Capacity (the parties having agreed that upon each occasion in which the Customer utilizes Excess Capacity, LDE shall provide notice to the Customer on the Customer's next invoice that the Customer has utilized such Excess Capacity); or the parties mutually agree to increase the Customer's Contract Capacity to ~~XXXX~~ pounds per hour.
- (e) Direction by the Customer pursuant to this Section 8.5 shall be effective only if such direction is given by a representative of the Customer who is the General Manager or a representative more senior.

8.6 Metering.

- (a) As part of the Energy Transfer System, LDE has installed the Metering Equipment at the Point of Delivery for the purpose of measuring the actual pounds of Steam delivered by LDE to the Customer and the Service Rates shall be calculated based on LDE's reading of its Metering Equipment.
- (b) Upon request by the Customer and provided such equipment may be added to the existing Metering Equipment, LDE shall provide at the Customer's sole cost output terminals at the Energy Transfer System, at a location and in a manner mutually determined by the parties, to allow the Customer to connect its data collection system to the Customer's Energy Transfer System and such output terminals will provide signals for flow rate with analogue and digital pulse output. If the Customer either chooses to install its own meters (the "**Customer's Meters**") in parallel with LDE meters and the Metering Equipment allows such installation, or chooses to install the Customer's Meters in serial to the Metering Equipment, the Customer shall cooperate with LDE in setting the Customer's Meters at the same time and calibration standard as LDE's Metering Equipment, and the Customer shall use the same data collection intervals as LDE's Metering Equipment. LDE agrees that it shall provide at the request and at the cost of the

Customer an interface module to obtain the digital signal in order to send it to the Customer's building automation system.

- (c) LDE shall, at its sole cost, furnish, install and maintain LDE's Metering Equipment in accordance with Good Engineering and Operating Practices, shall promptly repair or replace any Metering Equipment in need of repair or replacement and shall inspect, service and recalibrate its Metering Equipment on or about the anniversary of the Commencement Date each year, on a particular date agreeable to both parties.
 - (d) In the event that any part of the Metering Equipment fails to operate or to accurately record the actual pounds of Steam delivered within +/- two percent (2%), then:
 - (i) LDE shall promptly repair or replace any such Metering Equipment; and
 - (ii) LDE and the Customer shall mutually agree as to the estimate of pounds of Steam delivered to the Customer for the period in which the Metering Equipment failure occurred and the parties shall consider, in their determination of such estimate, factors which include, without limitation:
 - (A) the Customer's previous consumption under this Agreement up to a maximum period of twelve (12) months from the date that the Metering Equipment failed to accurately record the actual pounds of Steam delivered within +/- two percent (2%);
 - (B) application of appropriate operating and engineering assumptions;
 - (C) current operating and weather conditions; and
 - (D) readings of the Customer's check meter, if any,
- and the Customer shall pay for the Steam based on the estimate mutually agreed upon by the parties. In the event that the parties are unable to agree upon an estimate within thirty (30) days from the date that LDE notified the Customer of the Metering Equipment's failure to operate or to accurately record the actual pounds of Steam delivered to the Customer, the dispute shall be determined in accordance with the arbitration procedure described in Article XIII.
- (e) The Customer may request additional testing of the Metering Equipment at any time during the Term of this Agreement, provided that if the Metering Equipment is found to be accurate in accordance with Section 8.6(d), the Customer shall bear the cost of such requested additional testing. For the purposes of this section, "accurate" shall mean +/- two percent (2%).

8.7 Discontinuance of Supply.

- (a) LDE may temporarily curtail or discontinue the supply of Steam to the Customer without notice to the Customer for the purposes of complying with a notice from a Governmental Authority requiring such immediate curtailment or discontinuance of supply of Steam or if there is an emergency or LDE reasonably determines that there is an unsafe situation at the Premises. LDE shall use its best efforts to provide the Customer with advance notice of such temporary curtailment or discontinuance of supply of Steam in such circumstances.
- (b) Subject to the rights of the Customer to cure a Customer Event of Default, and in addition to any and all other rights and remedies available to LDE at law or in equity, LDE shall have the right, but not the obligation, to curtail or discontinue Service to the Customer upon written notice thereof on the occurrence of a Customer Event of Default. If LDE exercises its right to curtail or discontinue Service upon the occurrence of a Customer Event of Default, then Service shall not be recommenced by LDE until and unless the Customer:
 - (i) cures such Customer Event of Default; and
 - (ii) pays all amounts due for the Service supplied prior to any curtailment or discontinuance plus a reasonable amount to cover the cost of disconnection and reconnection.

Notwithstanding the discontinuance of Service to the Customer pursuant to this Section 8.7(b), the Customer shall remain liable for the Capacity Charge for the Term of the Agreement, subject to termination of this Agreement.

- (c) Notwithstanding any other provision of this Agreement, if in LDE's reasonable opinion it is unsafe to supply Steam to the Customer due to the state or quality of the Premises, then LDE, or any person acting under its authority, on giving written notice to the Customer following applicable cure periods provided for herein, may stop the supply of Steam from entering the Premises by cutting off the supply to the service pipe connected to the Premises or by such other means as may be deemed appropriate by LDE acting reasonably. The Customer shall be liable to LDE for the Service Rates due up to the time that the supply of Steam is cut off. LDE shall not thereafter be obliged to supply Steam to the Premises until the Premises have been repaired or replaced so that, in the opinion of LDE, acting reasonably, it is no longer unsafe to supply Steam to the Customer.
- (d) Following the period set out in Section 10.2(a), if any amount payable by the Customer to LDE pursuant to the terms hereof is not paid on or prior to the due date for such amount, LDE, or any person acting under its authority, on giving fifteen (15) days' prior written notice to the Customer, may stop the supply of Steam from entering the Premises by cutting off the supply to the service pipe connected to the Premises or by such other means as may be deemed appropriate by LDE in its sole discretion. The Customer shall be liable to LDE for the

Service Rates up to that time together with the reasonable expenses incurred by LDE in connection with the disconnection or discontinuance of the Steam supply to the Premises and the expenses of reconnecting the supply of Steam to the Premises. LDE shall not thereafter be obligated to supply Steam to the Premises until all amounts then outstanding are paid in full to LDE (including expenses incurred by LDE in connection with the disconnection or discontinuing of the Steam supplied to the Premises together with the expense of reconnecting the supply of Steam to the Premises). Upon payment of all amounts then outstanding in full (including any amounts payable pursuant to this Section 8.7(d)), LDE shall again supply Steam in accordance with the provisions of this Agreement, unless this Agreement has been terminated in accordance with the provisions hereof.

ARTICLE IX

INDEMNIFICATION AND LIMITATION OF LIABILITY

9.1 By the Customer.

- (a) The Customer will from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify LDE, its Affiliates and each of their directors, officers, employees, servants, and agents or any of them from and against all claims, demands, losses, costs, damages, and expenses whatsoever (including legal fees) which LDE, its Affiliates and each of their directors, officers, employees, servants and agents or any of them may from time to time hereafter bear, sustain, suffer, or be put onto arising out of or in connection with this Agreement as a result of the negligence, wilful negligence, or a default of the Customer or its directors, officers, employees, servants, agents, invitees or those for whom it is responsible in law; except that the Customer is not responsible to indemnify LDE under this section to the extent that such claims, demands, losses, costs, damages, and expenses suffered by LDE have been caused by the negligence of LDE or its directors, officers, employees, servants and agents.
- (b) LDE shall be deemed to hold the provisions of this clause that are for the benefit of LDE's and its Affiliates' officers, directors, employees, servants and agents in trust for LDE's and its Affiliates' officers, directors, employees, servants and agents as third party beneficiaries of this Agreement.
- (c) All indemnities provided for in this Section 9.1 shall survive the termination of this Agreement for a period of one (1) year, irrespective of the time of or party responsible for such termination and this indemnity shall remain in full force and effect and be binding on the Customer notwithstanding such termination for such one (1) year period.

9.2 By LDE.

- (a) LDE will from time to time and at all times hereafter, well and truly save, defend and keep harmless and fully indemnify the Customer, its directors, officers, employees, servants, and agents or any of them from and against all claims,

demands, losses, costs, damages, and expenses whatsoever (including legal fees) which the Customer, its directors, officers, employees, servants and agents or any of them may from time to time hereafter bear, sustain, suffer, or be put onto arising out of or in connection with this Agreement as a result of the negligence, wilful negligence, or a default of LDE or its directors, officers, employees, servants, agents, invitees or those for whom it is responsible in law; except that the LDE is not responsible to indemnify the Customer under this section to the extent that such claims, demands, losses, costs, damages, and expenses suffered by the Customer has been caused by the negligence of the Customer or its directors, officers, employees, servants and agents.

- (b) The Customer will be deemed to hold the provisions of this clause that are for the benefit of the Customer's officers, directors, employees, servants and agents in trust for the Customer's officers, directors, employees, servants and agents as third party beneficiaries of this Agreement.
- (c) All indemnities provided for in this Section 9.2 shall survive the termination of this Agreement for a period of one (1) year, irrespective of the time of or party responsible for such termination and all such indemnities shall remain in full force and effect and be binding on LDE notwithstanding such termination for such one (1) year period.

9.3 Indemnification Procedure.

In the event any claim is asserted or any suit is filed against either party for which the other party may be required to provide indemnification hereunder, then the party against whom the claim is so asserted shall promptly notify the other party of such claim or suit as soon as may be practicable but in any event not more than twenty (20) days after its receipt thereof, whereupon the other party may undertake, in conjunction with the party against whom the claim has been asserted, the defence of such suit or the settlement of any such claim at its own cost and expense; provided that the failure to provide notice as aforesaid shall not invalidate or affect any obligation to indemnify except to the extent that the party given such indemnification has been prejudiced thereby.

9.4 Limitation of Liability.

- (a) Notwithstanding any provision in this Agreement but provided that a given party has demonstrated that such party and its officers, directors, employees, servants, agents, invitees and those for whom it is responsible at law have acted and have met their obligations in a manner consistent with Good Engineering and Operating Practices, LDE shall not be liable to the Customer or the Customer be liable to LDE, or their respective officers, directors, employees, servants, agents, invitees or those for whom it is responsible in law, or any other person, for incidental, indirect, consequential, special or punitive damages howsoever caused or arising and whether suffered by the Customer or LDE or by others. This Section shall apply whether any such indirect, special, incidental or consequential

loss or damage is based on a claim brought or made in contract or in tort (including negligence and strict liability), under any warranty, or otherwise.

- (b) LDE does not give any warranty, express or implied, including by inspection or non-rejection, or by giving approval or consents, or in any other way, as to the adequacy, safety or other characteristics of any structures, equipment, wires, mains, pipes, appliances or devices owned, leased, installed or maintained by the Customer or assume any obligation as to the design, operation or maintenance of the Customer's facilities.
- (c) If the Service is used by the Customer for heating, LDE shall have no responsibility for temperature comfort levels within the Premises controlled and determined by the Customer. Customer shall promptly notify LDE of any concerns about the quantity or quality of the Service received.

ARTICLE X

EVENTS OF DEFAULTS

10.1 LDE Events of Default.

Any one of the following events shall constitute an event of default by LDE (each an "LDE Event of Default"):

- (a) LDE fails to supply the Service to the Premises from the System, or by any alternate service, for a continuous period of thirty (30) days, other than as permitted by this Agreement.
- (b) If LDE takes any action in respect of liquidation or winding-up, or makes an assignment for the benefit of creditors, or makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable statute of any applicable jurisdiction, or if a custodian or receiver or receiver and manager or any other official with similar power is appointed for LDE, the Premises or a substantial portion of LDE's properties and assets and such appointment is not dismissed or discharged within ten (10) calendar days, or if a bankruptcy or similar petition with respect to the bankruptcy, or other enforced liquidation of, LDE presented or filed against it unless same is dismissed or discharged within thirty (30) days and during which grace period execution thereunder is effectively stayed, or if LDE becomes insolvent.
- (c) LDE fails to comply with any other provision of this Agreement and such failure results in a Material Adverse Effect and LDE fails to cure or remedy that default within thirty (30) days after receipt by LDE or the Financing Entity, if applicable, of notice of such default or such longer period as may be reasonably required by LDE to cure such default, provided that LDE or the Financing Entity diligently continues to attempt to cure such default until such default is fully cured.

10.2 Customer Default.

Any one of the following events shall constitute an event of default by the Customer (each a "Customer Event of Default"):

- (a) Customer shall fail to pay any invoice delivered by LDE to the Customer for Service rendered by LDE, or any other charges incurred by the Customer under this Agreement and owing to LDE, after notice and written demand by LDE to the Customer, for a period of sixty (60) days after the due date of such unpaid invoice.
- (b) if the Customer takes any action in respect of liquidation or winding-up, or makes an assignment for the benefit of creditors, or makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable statute of any applicable jurisdiction, or if a custodian or receiver or receiver and manager or any other official with similar power is appointed for the Customer, the Premises or a substantial portion of the Customer's properties and assets and such appointment is not dismissed or discharged within ten (10) calendar days, or if a bankruptcy or similar petition with respect to the bankruptcy, or other enforced liquidation of, the Customer presented or filed against it unless same is dismissed or discharged within thirty (30) days and during which grace period execution thereunder is effectively stayed, or if the Customer becomes insolvent.
- (c) Customer shall fail to comply with any other provision of this Agreement and such failure results in a Material Adverse Effect to LDE, and Customer shall fail to cure that default within thirty (30) days after receipt by the Customer of notice of such default or such longer period as may be reasonably required by the Customer to cure such default, provided that the Customer diligently continues to attempt to cure such default until such default is fully cured.

ARTICLE XI TERMINATION

11.1 Termination By Customer.

- (a) Upon the occurrence of an LDE Event of Default which has not been remedied within the applicable cure period, the Customer shall have the right to terminate the Agreement on an immediate basis.
- (b) In the event LDE disputes whether LDE is in material default of its obligations hereunder, the Customer shall continue to pay the full Energy Charge (provided that LDE continues to supply Steam in accordance with the terms hereof) and all interests and other charges contemplated by this Agreement excepting the Capacity Charge, which the Customer shall pay into a separate account, until the question is finally resolved by agreement or pursuant to Article XIII.

11.2 Termination By LDE.

Upon the occurrence of a Customer Event of Default which has not been remedied within the applicable cure period, LDE shall have the right to terminate the Agreement, or any person acting under its authority may stop the supply of Steam to the Premises by cutting off the supply to the service pipe connected to the Premises or by such other means as may be deemed appropriate by LDE on an immediate basis, following notice as required herein.

11.3 Consequences Upon Termination.

Upon termination or expiration of this Agreement for any reason:

- (a) the relevant provisions of this Agreement shall continue in effect after termination to the extent necessary to provide for any billings, adjustments and payments up to the date of termination;
- (b) the termination of this Agreement shall not affect any rights or obligations which may have accrued prior to such termination or any other rights which the terminating party may have arising out of either the termination or the event giving rise to the termination and shall not affect the continuing obligations of either party under this Agreement, which are expressed to continue after termination of this Agreement; and
- (c) except as provided in Sections 11.3(a) and 11.3(b) above, the terminating party shall have no liability whatsoever to the other party arising from such termination. For greater certainty, in the event that the non-defaulting party terminates this Agreement, the non-defaulting party shall have no liability whatsoever to the defaulting party for any costs, charges, expenditures, losses or damages (whether consequential, special or otherwise) which the defaulting party may incur as a result of the termination of this Agreement.

11.4 Damage or Destruction of Customer's Premises or Heating System.

- (a) In the event the Premises or the Customer's heating system is damaged by fire or any other means rendering the Premises or the Customer's heating system wholly or substantially unfit to receive Steam in the opinion of LDE, acting reasonably, and if:
 - (i) the Customer has not within six (6) months of the date of the casualty provided LDE with written notice of its intention to reconstruct or repair the Premises;
 - (ii) subject to an Event of Force Majeure, the Customer has not obtained, if any, within eight (8) months of the date of the casualty, easements, rights of way, permits, licences and other authorizations or real property interests from any local, provincial or federal government, agency, instrumentality or other person that is required to commence the reconstruction or repairs

and diligently and in good faith pursues such easements, rights of way, permits, licences and other authorizations or real property interests;

- (iii) subject to an Event of Force Majeure, the Customer has not within eight (8) months of the date of the casualty commenced the reconstruction or repairs and diligently and in good faith pursues such reconstruction or repairs to completion; or
- (iv) the reconstruction or repairs are not completed so that the supply of Steam can be resumed within thirty (30) months of the date of the casualty,

then this Agreement may be terminated at the sole discretion of LDE by notice in writing to the Customer.

- (b) In the event that after the Commencement Date LDE is unable to supply Steam to the Customer due to an Event of Force Majeure and the supply of Steam is not resumed within ninety (90) days of the occurrence of the Event of Force Majeure, this Agreement may be terminated by the Customer at the sole discretion of the Customer by providing notice in writing to LDE, provided that such notice is given, prior to the resumption of the supply of Steam by LDE.

11.5 Damage or Destruction of the System.

- (a) In the event that the System is damaged by fire or any other means rendering the System wholly or substantially unfit to supply Steam in the opinion of the Customer, acting reasonably, or if LDE's plant is damaged to the extent that LDE is not able to meet its obligations hereunder in the opinion of the Customer, acting reasonably, and if:
 - (i) LDE has not within six (6) months of the date of the casualty provided the Customer with written notice of its intention to reconstruct or repair the System and/or LDE's plant;
 - (ii) subject to an Event of Force Majeure, LDE has not obtained, if any, within eight (8) months of the date of the casualty, easements, rights of way, permits, licences and other authorizations or real property interests from any local, provincial or federal government, agency, instrumentality or other person that is required to commence the reconstruction or repairs and diligently and in good faith pursues such easements, rights of way, permits, licences and other authorizations or real property interests;
 - (iii) subject to an Event of Force Majeure, LDE has not within eight (8) months of the date of the casualty commenced the reconstruction or repairs and diligently and in good faith pursues such reconstruction or repairs to completion; or
 - (iv) the reconstruction or repairs are not completed so that the supply of Steam can be resumed within eighteen (18) months of the date of the casualty,

then this Agreement may be terminated at the sole discretion of the Customer by notice in writing to LDE.

- (b) In the event that after the Commencement Date the Customer is unable to receive Steam from LDE due to an Event of Force Majeure and the receipt of Steam is not resumed within ninety (90) days of the occurrence of the Event of Force Majeure, this Agreement may be terminated by LDE at the sole discretion of LDE by providing notice in writing to the Customer, provided that such notice is given, prior to the resumption of the receipt of Steam by the Customer.

11.6 Termination Payment.

Upon the termination of this Agreement in accordance with Section 10.2, the Customer shall pay to LDE the following amounts, in addition to any other amounts payable by the Customer to LDE in accordance with the terms hereof up to the date of termination, (together with interest thereon as provided for in this Agreement):

- (a) an amount equal to the net present value of the Capacity Charge that would have been payable during the period of time from the date of termination to the end of the Term had the Agreement not been terminated. Such amount shall be calculated in accordance with the Capacity Charge formula described in Exhibit "B-1", based on a discount rate of eight percent (8%) and an annual CPI increase of two percent (2%); and
- (b) any reasonable costs which may be incurred by LDE in connection with the disconnection of the supply of Steam to the Premises and any reasonable costs associated with removing the Energy Transfer System from within the Premises and the Lands, including the restoration of any pavement or boulevard, if applicable, or any other work of a restorative nature.

11.7 Cap the Pipes.

On the expiry of this Agreement or upon termination by the Customer as contemplated in Section 10.1, LDE shall cap its service pipes to the Premises, in the Customer's sole discretion, acting reasonably, either in the Premises or at the property line, at LDE's cost. LDE shall use its best efforts to complete such work within nine (9) months from the date of such termination or expiration of the Agreement. LDE has no obligation to comply with the terms of this section in the event that LDE terminates this Agreement.

11.8 No Limitation.

Nothing contained in this Article XI shall limit or restrict any other legal or equitable rights of LDE or the Customer.

ARTICLE XII
CONFIDENTIALITY

12.1 Confidentiality.

- (a) For purposes of this Article XII, “**Confidential Information**” comprises the commercial terms of this Agreement, including the price structure, billing terms and consumption information of the Customer. Confidential Information does not include any information that at the time has become generally available to the public other than as a result of a disclosure by the other party or any of its Representatives.
- (b) Neither party shall disclose any Confidential Information to third parties, other than required for the purposes of this Agreement or on a confidential basis to each party’s respective Representatives, or as required by law or by any court with jurisdiction. Notwithstanding the foregoing, the Customer may disclose certain Confidential Information to its Tenants and their respective auditors and similar consultants as may be necessary in order for the Customer to fulfill its obligations pursuant to tenant audit rights. The parties shall inform their respective Representatives of these obligations and take reasonable steps to ensure their compliance with this Agreement.
- (c) The confidentiality obligations in this Article XII shall survive termination or expiration of this Agreement for a period of one (1) year from the date of such termination or expiration.

ARTICLE XIII
ARBITRATION

13.1 Arbitration.

The parties hereto agree that any disputes (which are not within the exclusive jurisdiction of a Governmental Authority) relating to the Agreement shall be referred, settled and finally resolved by arbitration in accordance with the provisions of the *Arbitrations Act* (Ontario), as now enacted or as the same may from time to time be amended, re-enacted or replaced. The party initiating arbitration shall notify the other. Each party shall nominate one (1) arbitrator within ten (10) days of such notification, and a third shall be chosen within ten (10) days thereof by the two nominated arbitrators or, if they fail to timely appoint an arbitrator, an application may be made to the Ontario Court (General Division) pursuant to the *Arbitrations Act* (Ontario) to appoint the third arbitrator. If one (1) party fails to nominate its arbitrator, the dispute shall be settled by the single arbitrator nominated by the other party. The arbitrators shall conduct a hearing and within thirty (30) days thereafter, unless such time is extended by agreement of the parties, shall issue a written decision including determination of cost allocation between the parties. The arbitrators shall not have power to amend or add to this Agreement. Subject to such limitation, the decision of the arbitrators (including the decisions that the dispute is arbitrable) shall be final and binding on the parties, and shall be enforceable in a court of competent

jurisdiction. The arbitration shall be conducted in English in the City of London at such place therein and time as the Arbitrator may fix.

ARTICLE XIV **FORCE MAJEURE**

14.1 Event of Force Majeure.

Notwithstanding any other provision of this Agreement, LDE shall not be liable to the Customer, its officers, directors, employees, servants, agents or invitees, or any of them, and the Customer shall not be liable to LDE, its officers, directors, employees and agents, or any of them, for any failure or delay in performance under this Agreement (other than the obligation to pay amounts due under this Agreement) if such failure or delay is due in whole or in part to an Event of Force Majeure. The party affected by an Event of Force Majeure shall, as soon as reasonably possible given the circumstances, give notice to the other party stating the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect. Performance by the non-performing party shall be excused for no greater scope and no longer duration than is required by the Event of Force Majeure. The non-performing party shall use its reasonable best efforts to remedy its inability to perform, but neither party shall be obliged to settle or resolve a labour difficulty or to hire substitute labour on terms unacceptable to that party.

ARTICLE XV **MISCELLANEOUS**

15.1 Pledge or Assignment.

- (a) LDE may only assign this Agreement (i) with the consent of the Customer, not to be unreasonably withheld; (ii) without consent, to a Financing Entity as collateral security upon notice to the Customer; (iii) without consent, to an Affiliate upon notice to the Customer; or (iv) without consent, to the purchaser of all, or substantially all, of the assets of LDE on notice to the Customer. Any assignment of this Agreement otherwise than in accordance with this Section 15.1(a) shall constitute a breach by LDE of this Agreement.
- (b) The Customer may at any time during the Term of this Agreement sell, transfer or otherwise dispose of all or any portion of its rights in respect of the Premises, provided that any purchaser, grantee or transferee (the “**New Owner**”) of any such rights shall have entered into an assumption agreement with LDE and the Customer containing:
 - (i) a covenant by the New Owner to perform all the obligations of the Customer to be performed under this Agreement to the same extent as if this Agreement had been originally executed by the New Owner; and
 - (ii) a provision subjecting any further sale, transfer or other disposition of such interest or any portion thereof in this Agreement to the restriction contained in Section 15.1(b) hereof.

15.2 Financing Entities.

The parties agree that each party should provide notice to the other party promptly upon contracting with a new secured creditor or other Financing Entity.

15.3 Buy-Out By the Customer.

LDE agrees that the Customer shall have the right, upon thirty (30) days' notice to LDE, to terminate this Agreement without default, on the payment of the Customer to LDE of an amount equal to the amount payable by the Customer pursuant to Section 11.6.

15.4 Benefit of the Agreement.

This Agreement will enure to the benefit of and be binding upon the respective successors and assigns of the parties hereto.

15.5 Governing Law.

This Agreement shall be construed in accordance with and shall be enforceable under the laws of the Province of Ontario and the federal laws of Canada applicable therein.

15.6 Notices.

All notices hereunder (other than notices designated for delivery to operating personnel, which shall be made in any manner reasonable under the circumstances) shall be sufficient if personally delivered or sent by registered or certified mail postage prepaid, courier service or telecopy (followed by mail) as follows:

- (a) If to LDE:

CURRENT LDE ADDRESS AND OFFICER

with a copy to the Financing Entity, if applicable, as specified by written notice from LDE.

- (b) If to the Customer:

THE CORPORATION OF THE CITY OF LONDON
c/o City Solicitor's Office
300 Dufferin Ave.
P.O. Box 5035
London, Ontario
N6A 4L9

LDE and Customer by like notice may designate any further or different address or addresses to which notices shall be sent.

15.7 Severability.

If any clause, provision or section of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such clause, provision or section shall not affect any of the remaining provisions hereof.

15.8 Entire Agreement.

This Agreement and the exhibits attached hereto and incorporated herein by reference constitute the entire agreement between the parties with respect to the matters contained herein. All prior agreements with respect thereto are superseded hereby and each party confirms that it is not relying on any representations or warranties of the other party except as specifically set forth herein.

15.9 Further Assurances.

Each party shall from time to time execute and deliver all such further documents and instruments and do all acts and things as the other party may reasonably require to effectively carry out or better evidence or perfect the full intent and meaning of this Agreement.

15.10 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 instrument.

15.11 Amendments and Waivers.

No modification of or amendment to this Agreement will be valid or binding unless set forth in writing and duly executed by both of the parties hereto and no waiver of any breach of any term or provision of this Agreement will be effective or binding unless made in writing and signed by the party purporting to give the same and, unless otherwise provided, will be limited to the specific breach waived.

[EXECUTION PAGE FOLLOWS]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

**VERESEN ENERGY INFRASTRUCTURE INC.,
doing business as LONDON DISTRICT ENERGY**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I have authority to bind the Corporation.

**THE CORPORATION OF THE CITY OF
LONDON**

By: _____
Name: _____
Title: Mayor

By: _____
Name: _____
Title: City Clerk

EXHIBIT "A"

PREMISES, CONTRACT CAPACITY AND STEAM SPECIFICATIONS

I. LANDS

II. PREMISES AND CONTRACT CAPACITY

| Premises | Steam Contract Capacity |
|---|---|
| COLBORNE BUILDING – 391 SOUTH STREET, LONDON, ONTARIO | XXXXX pounds per hour XXXXX pounds per annum |

III. SERVICE SPECIFICATIONS

| | |
|-----------------|--|
| Saturated Steam | Steam pressure of XXXXX pounds per square inch gauge |
|-----------------|--|

EXHIBIT "B-1"

SERVICE RATES

Definitions

In this Exhibit "B-1":

"CPI" means the Consumer Price Index - Canada (All Items) of Statistics Canada (or any comparable successor index) for the most recent period for which such index has been published. If the referenced index is discontinued, the Provincial CPI (or any comparable successor index) shall be utilized. If publication of CPI is discontinued, the parties shall use a revised or replacement index that is similar to the discontinued CPI.

"Peak Capacity" means actual measured peak hourly demand measured in pounds per hour.

A. SERVICE RATES FOR STEAM

Service Rates for Steam:

Service Rates for Steam = Energy Charge + Capacity Charge

Energy Charge:

Energy Charge = \$XXXXX/mlb x Adjustment Factors (as set out below in Section B)

also defined as:

Energy Charge = Gas + Electricity + Chemicals + Water (all per month as set out in Section B)

Capacity Charge:

Capacity Charge = Base Capacity Charge + Incremental Capacity Charge (if positive)

- Base Capacity Charge = \$XXXXX/month (Base Capacity is to be escalated on a monthly basis at CPI)
- Incremental Capacity Charge = (Peak Capacity - XXXXX) x (Base Capacity Charge / XXXXX)

For greater certainty, CPI at the Commencement Date is XXXXX, where the CPI (base = 100) is from base year XXXXX.

B. ADJUSTMENTS TO SERVICE RATES

The Energy Charge will be adjusted monthly based on LDE's actual costs of gas, electricity, chemicals and water for the previous month in accordance per the following formula:

- Gas = \$XXXX x (monthly price of gas / \$XXXX)
- Electricity = \$XXXX x (monthly price of electricity / \$XXXX)
- Chemicals = \$XXXX x (monthly price of chemicals / \$XXXX)
- Water = \$0. XXXX x (monthly price of water / \$XXXX)

EXHIBIT "B-2"

SAMPLE INVOICE

See attached.

EXHIBIT "C"

PLANS AND EQUIPMENT

Exhibit C-1 represents the Energy Transfer System on the Commencement Date. See attached.

Exhibit C-2 represents the Energy Transfer System following the construction of a Condensate Return System. See attached.

EXHIBIT "D"

EQUIPMENT OWNERSHIP

The Customer agrees to maintain area(s) within the Premises (depending on size of equipment required) to safely and securely accommodate the Energy Transfer System described in Exhibit "C", as well as sufficient facilities including without limitation, light, ventilation and electrical in respect of such areas and a sprinkler system in respect of such areas.

LDE agrees to maintain the delivery equipment, including:

- metering required to measure energy consumption at the Point of Delivery in accordance with Section 8.6
- all piping, valves, pump(s), controls, heat exchanger(s) related to the Energy Transfer System at the Premises
- the limiting device at the level set pursuant to Section 8.3(c).

and specifically but not limited to the following:

- one (1) Yokogawa Vortex Shedding Flowmeter (4")
- three (3) Secespol Shell and Coil Heat Exchangers
- two (2) Warren Electric Condensate Control Valves
- two (2) Armstrong In-Line Hot Water Circulating Pumps
- Honeywell control system.

SCHEDULE " B "

South St Hospital – Colborne Building: Steam Supply Draft

May 1, 2013

| TERM SHEET | |
|---------------------------------------|--|
| TERM | DESCRIPTION |
| Facility: | South St Hospital Lands – Colborne Building |
| Parties: | Corporation of the City of London, as the Buyer London District Energy, as the Supplier |
| Services: | Supply of steam energy to north building location for the purposes of building heating. Service will also include; <ul style="list-style-type: none"> • Peak steam supply: 3mlb/hr |
| Price: | <ul style="list-style-type: none"> • Base year = February 2011 • Capacity charge = \$3,261/ month • Capacity charge after initial term = \$167/ month • Escalation at CPI on 87.5% of capacity charge • Energy Charge = \$8.102/mlb x adjustment factor • Base cost of natural gas = \$5.62/mmBTU LHV (Feb 2011) <p>Price Adjustment;</p> <ul style="list-style-type: none"> - Energy Charge will be adjusted monthly based on actual commodity costs per the following formulae; <ul style="list-style-type: none"> o Gas = $\\$7.52 \times (\text{mthly price of gas} / \\$5.62)$ o Electricity = $\\$0.244 \times (\text{mthly price of electricity} / \\$0.082)$ o Chemicals = $\\$0.043 \times (\text{mthly price of chemicals} / \\$0.184)$ o Water = $\\$0.295 \times (\text{mthly price of water} / \\$6.592)$ |
| Term: | Service to begin September 1, 2013 and continue for a term of 3 years |
| General Terms & Conditions | All general terms and conditions to match the existing Steam Supply Agreement for South St location. |
| Supply Connection: | <ul style="list-style-type: none"> - LDE will engineer, supply and install steam supply and metering systems to meet the supply conditions of this agreement. - Steam supply piping systems will connect outside the building per the attached sketch. - Metering location to be determined. |

South St Hospital – Colborne Building: Steam Supply
Draft

May 1,2013

| TERM SHEET | |
|--------------------|--|
| TERM | DESCRIPTION |
| Connection Details | <p>Background:</p> <p>The City of London has asked London District Energy to develop a proposal to supply the Colborne Building on West side of Colborne St. with a new steam supply service.</p> <p>The buildings are presently supplied with 60 psi steam from a pressure reducing station. Due to plans to decommission and eventually demolish the buildings on the south side of South Street and west of the Colborne Building, the existing steam supply will no longer be available.</p> <p>London District Energy proposes to supply Colborne Building by installing a 3” steam main and 2” condensate return line from the existing steam main and condensate line on Colborne St., through the basement wall of the Colborne Building, and connecting to the existing steam infrastructure inside the building. The original supply from the South Street facility will be capped. A pressure reducing station will be installed in the building to reduce the pressure to 60 psi.</p> <p>Contractor Scope of Work (Civil)</p> <ul style="list-style-type: none">• Excavate and backfill approximately 50 feet of trench, not intended to exceed 2 meters in depth and 1 meter in width (at the bottom of the trench). This includes hand digging, wet excavation where required, utility crossings, and pumping out wet locations.• Implementation of approved traffic control plans (prepared by others, LDE to arrange) including all barriers, signs, notices, and traffic control signals• Hoarding fence for separation of pedestrian traffic during the excavation work• Obtain and coordinate all utility locates• Support existing utility poles and utility crossings• Support and / or repair existing private services (sewage, water) if disturbed or damaged during pipeline installation.• Supply, place, and compact bedding sand to surround the pipeline.• Dispose of all surplus excavated trench material (off-site)• Grade and compact sub-grade for granular bases• Supply, place, and compact 450 mm granular “B” sub-base for road restoration• Supply, place, and compact 150 mm granular “A” base for restoration of road• Adjust existing manhole lids and water valves to match final asphalt grade.• Mill edges of asphalt for overlapping of new layers• Supply, place, and compact 85 mm of HL8 asphalt and 45 mm of HL3 asphalt for road restoration |

South St Hospital – Colborne Building: Steam Supply
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May 1,2013

| TERM SHEET | |
|------------|--|
| TERM | DESCRIPTION |
| | <ul style="list-style-type: none">• Replace concrete curbs, gutters, and sidewalks to original condition if disturbed or damaged.• Pavement markings• Supply and install marker tape over the pipeline while backfilling for ID <p>Contractor Scope of Work (Mechanical)</p> <ul style="list-style-type: none">• Supply and install 50 feet of schedule 40 A106B (3") steam piping per the supplied drawing• Insulate the steam main using 3" Foamglass or equivalent insulation, complete with rubberized membrane and aluminum jacketing• Install corrosion protection anodes with steam main• Manage all TSSA requirements including weld non-destructive testing, weld map documentation, and inspections during construction• Supply and install 50 feet of Urecon Pex-Flex Preinsulated condensate return piping• Apply for and manage all required City of London and Ministry of Labour permits. <p>The pipeline installation will include a 3" isolation valve at the tee connection to the 10" main, a 3" expansion joint, and all necessary fittings to complete as shown.</p> <p>A detailed drawing suitable for submission to TSSA will be provided.</p> |

South St Hospital – Colborne Building: Steam Supply
Draft

May 1, 2013

Proposed New Steam Connection – Colborne Building

