

**POWERSTREAM INC.**

- and -

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

- and -

**COLLINGWOOD UTILITY SERVICES CORP.**

- and -

**COLLUS POWER CORP.**

- and -

**COLLUS SOLUTIONS CORP.**

- and -

**COLLUS ENERGY CORP.**

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**SHARE PURCHASE AGREEMENT**

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**Dated as of the 6th day of March, 2012**

**AIRD & BERLIS LLP**

Barristers and Solicitors

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## SCHEDULES

<u>Schedule Number</u>	<u>Schedule Title</u>
Schedule A	Promissory Note
Schedule B	Shareholders' Agreement
Schedule C	Recapitalization Dividends and Working Capital Adjustment Calculation
Schedule D	Escrow Agreement
Schedule E	Additional Closing Dividends
Schedule 4.1(1)(c)	Third Party Consents of Vendor, Corporation and Subsidiaries
Schedule 4.2(1)(c)	Third Party Consents of the Purchaser
Schedule 5.2(9)	Real Property and Leased Property
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Schedule 5.2(20)	2010 Financial Statements
Schedule 5.2(21)	Service Agreements

## SHARE PURCHASE AGREEMENT

THIS AGREEMENT made as of the 6th day of March, 2012

**BETWEEN:**

**POWERSTREAM INC.**, a corporation incorporated under the laws of Ontario (the "**Purchaser**")

- and -

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**, a corporation incorporated under the *Municipal Act* (Ontario) ("**Vendor**")

- and -

**COLLINGWOOD UTILITY SERVICES CORP.**, a corporation incorporated under the laws of Ontario (the "**Corporation**")

- and -

**COLLUS POWER CORP.**, a corporation incorporated under the laws of Ontario ("**Collus**")

- and -

**COLLUS SOLUTIONS CORP.**, a corporation incorporated under the laws of Ontario ("**Solutions**")

- and -

**COLLUS ENERGY CORP.**, a corporation incorporated under the laws of Ontario ("**Energy**")

**RECITALS:**

- (a) All of the issued and outstanding shares of the Corporation are owned by Vendor and all of the issued and outstanding shares of Collus, Solutions and Energy are owned by the Corporation (together Collus, Solutions and Energy are referred to as the "**Subsidiaries**" and "**Subsidiary**" means any of them).

- (b) All of the issued and outstanding shares of the Purchaser are indirectly owned by the Corporation of the City of Barrie, the Corporation of the Town of Markham and the Corporation of the City of Vaughan.
- (c) Pursuant to a request for proposals issued by Collus on October 4, 2011 (the “RFP”), the Vendor wishes to enter into a strategic partnership arrangement with the Purchaser whereby the Purchaser will purchase 50% of the issued and outstanding shares in the capital of the Corporation, being 2,550,820 common shares (the “**Purchased Shares**”), upon the terms and conditions set out in this Agreement, in order to provide the Corporation and its Subsidiaries with cost-effective resources in a range of areas, as agreed to by the Parties, including engineering, construction, call center, regulatory and rates, safety and others to serve the residents and businesses of Collingwood, Thornbury, Stayner and Creemore (the “**Transaction**”).
- (d) The Purchaser wishes to purchase from the Vendor the Purchased Shares upon the terms and conditions set out in this Agreement.

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

## **ARTICLE 1**

### **INTERPRETATION**

#### **1.1 Defined Terms**

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

“**2010 Financial Statements**” means the final audited consolidated and non-consolidated financial statements consisting of a balance sheet, a statement of earnings and retained earnings and a statement of cash flows as at and for the period ending December 31, 2010 for each of the Corporation and the Subsidiaries, copies of which 2010 Financial Statements are attached as Schedule 5.2(20);

“**Additional Closing Dividend Amount**” has the meaning given to it in Section 2.1(2)(c);

“**Additional Closing Dividends**” has the meaning given to it in Section 2.1(2)(c);

“**Affiliate**” has the meaning set forth in the OBCA;

“**Affiliate Relationships Code**” means the Affiliate Relationships Code for Electricity Distributors and Transmitters, dated April 1, 1999 and revised May 16, 2008, issued by the OEB;

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

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

**“Books and Records”** means all books, records, files and papers of the Corporation and the Subsidiaries, as applicable, including computer programs (including source codes and software programs), computer manuals, computer data, financial and Tax working papers, financial and Tax books and records, business reports, business plans and projections, sales and advertising materials, sales and purchases records and correspondence, trade association files, research and development records, lists of present and former customers and suppliers, personnel and employment records, minute and share certificate books, and all copies and recordings of the foregoing;

**“Business”** means the electricity distribution businesses carried on by the Corporation and the Subsidiaries and the provision of ancillary services;

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

**“Claim”** means:

- (a) any suit, action, dispute, investigation, claim, arbitration, order, summons, citation, directive, charge, demand or prosecution, whether legal or administrative;
- (b) any other proceeding;
- (c) any appeal or application for review; or
- (d) at law or in equity or before or by any Governmental Authority;

**“Closing”** means the delivery of all documents and instruments required to effect the completion of the Transaction and of the other transactions and entering into of the documents and agreements referred to herein;

**“Closing Date”** means the later of (i) March 31, 2012 and (ii) seven (7) days following the approval of the OEB pursuant to Section 4.3(3), or as may otherwise be agreed upon in writing by the Parties;

**“Closing Date Financial Statements”** means the final audited unconsolidated financial statements of each of the Corporation and the Subsidiaries for the period ending on the Closing Date, prepared consistent with past practice and delivered by the Vendor to the Purchaser within 60 days of Closing;

**“Closing Time”** means the time of the Closing which shall be 10:00 am on the Closing Date or such other time on the Closing Date as may be agreed to by the Parties;

**“Closing Working Capital Statement”** has the meaning set forth in Section 2.1(7)(a)(ii);

**“Collective Agreement”** means the collective agreement between Collus, Collingwood Public Utilities of the Town of Collingwood and Its Employees Through Local #636 of the International Brotherhood of Electrical Workers, dated January 14, 2011;

**“Collingwood Transfer By-law”** means the Transfer By-law Number (2001) - 16584 passed by Collingwood pursuant to the Electricity Act dated June 26, 2001, as amended;

**“Collus”** has the meaning set forth in the recitals hereto;

**“Collus Indemnitee”** has the meaning set forth in Section 7.1(3);

**“Constating Documents”** means, with respect to any Person, its articles or certificate of incorporation, amendment, amalgamation or continuance, by-laws and all unanimous shareholder agreements, other shareholder agreements, voting trusts, pooling agreements and similar Contracts, arrangements and understandings, all as amended, supplemented, restated and replaced from time to time;

**“Contract”** means, in respect of a particular Person, any contract, note, bond, mortgage, agreement, indenture, lease, agreement to lease, licence, personal property lease, commitment, understanding, instrument, option or any other instrument, document or obligation, oral or written, to which such Person is a party or whereby such Person’s assets may be bound;

**“Corporation”** has the meaning set forth in the recitals hereto;

**“Current Assets”** means the aggregate of the cash, the accounts receivable, unbilled revenue, inventory (net of any obsolete items of inventory), Taxes receivable in respect of all pre-Closing Tax periods and prepaid expenses of Collus, as calculated in accordance with GAAP, applied consistently with prior periods, as at the Closing Date, but excluding the current portion of Regulatory Assets;

**“Current Liabilities”** means the accounts payable, accrued liabilities and expenses (including, without limitation or duplication, any accrued expenses related to the Transaction), accrued and unpaid Taxes for all pre-Closing Tax periods (including, without limitation any Taxes arising as a result of the Closing), unearned revenue,

customer deposits and accounts payable of Collus in respect of which cheques have been issued but have not cleared as at Closing, all as calculated in accordance with GAAP, applied consistently with prior periods, as at the Closing Date, but excludes the current portion of long term debt, the current portion of the Promissory Note and the current portion of Regulatory Liabilities;

“**Direct Claim**” has the meaning set forth in Section 7.2(9);

“**Disputes**” has the meaning set forth in Section 8.2(a);

“**Easements**” means all of the following real property interests enjoyed or used by or for the benefit of the Business: (i) all easements and rights of way, registered and unregistered; (ii) the right to use, transverse, enjoy or have access to, over, in or under any real property, whether public or private; and (iii) all permits, licences and permissions received, used or enjoyed in respect of any of the foregoing and any right or benefit in the nature or character of any of the foregoing;

“**Electricity Act**” means the *Electricity Act, 1998* (Ontario) and the regulations thereto, as amended;

“**Employee Plans**” has the meaning set forth in Section 5.2(12);

“**Employees**” means all full time and part-time, union and non-union employees and contract employees of Collus and Solutions;

“**Employment Law**” means the *Employment Standards Act, 2000* (Ontario), the *Labour Relations Act, 1995* (Ontario), the *Pay Equity Act* (Ontario), the *Occupational Health and Safety Act* (Ontario), the *Human Rights Code* (Ontario) and the *Workplace Safety and Insurance Act, 1997* (Ontario) and any other applicable statute as it relates to employment matters;

“**Encumbrance**” means any encumbrance, lien, charge, hypothec, pledge, mortgage, title retention agreement, security interest of any nature, adverse claim, exception, reservation, easement, right of occupation, option, right of pre-emption, privilege or any matter capable of registration against title or any Contract to create any of the foregoing;

“**Energy**” has the meaning set forth in the recitals hereto;

“**Environmental Law**” means all applicable statutes, regulations, ordinances, by-laws, Environmental Permits, orders, decisions and rules and any legally enforceable policies, codes or guidelines of a Governmental Authority (whether federal, provincial or municipal) relating to the Environment or the Release, use, transport, disposal or handling of Hazardous Substances, including without limitation the *Environmental Protection Act* (Ontario), *Canadian Environmental Assessment Act*, *Canadian Environmental Protection Act*, *Dangerous Goods Transportation Act* (Ontario), *Energy Competition Act* (Ontario), *Environmental Bill of Rights* (Ontario), *Fisheries Act*



(Canada), *Technical Standards and Safety Act* (Ontario), *Ontario Water Resources Act*, *Pest Control Products Act* (Canada), *Pesticides Act* (Ontario), *Transportation of Dangerous Goods Act* (Canada) and any applicable municipal noise or sewer use by-law;

“**Environmental Permit**” means any Permit required pursuant to Environmental Law;

“**Escrow Agreement**” means the escrow agreement to be entered into between the Parties and Aird & Berlis LLP, in substantially the form of escrow agreement found in Schedule D hereto;

“**Final 2011 Financial Statements**” means the final audited consolidated and non-consolidated financial statements consisting of a balance sheet, a statement of earnings and retained earnings and a statement of cash flows as at and for the period ending December 31, 2011 for each of the Corporation and the Subsidiaries to be prepared consistent with past practice and delivered to the Purchaser prior to Closing;

“**Final Calculation Statement**” has the meaning set forth in Section 2.1(7)(a)(iii);

“**Final Additional Closing Dividend Amount**” has the meaning set forth in Section 2.1(2)(c);

“**Final Dividend Adjustment Amount**” has the meaning set forth in Section 2.1(7)(h);

“**Final Recapitalization Dividend**” has the meaning set forth in Section 2.1(2)(b);

“**GAAP**” has the meaning set forth in Section 1.5;

“**generally accepted accounting principles**” has the meaning set forth in Section 1.5;

“**Governmental Authority**” means any government or political subdivision (including without limitation, any municipality or federal or provincial ministry) or quasi-governmental or regulatory agency, authority, board, commission, department or instrumentality of any government or political subdivision, or any court or tribunal, and specifically includes the OEB, the OPA, the Electrical Safety Authority, the Environmental Review Tribunal and the Independent Electricity System Operator of Ontario;

“**Hazardous Substance**” means:

- (a) any petrochemical or petroleum product, oil or coal ash, mercury, radioactive material, radon gas, asbestos in any form that is friable, urea formaldehyde foam insulation or substance that contains or may contain PCBs;
- (b) any chemical, material or substance defined as or included in the definition of “hazardous substance”, “hazardous waste”, “hazardous material”, “hazardous constituent”, “listed waste”, “restricted hazardous material”, “extremely hazardous substance”, “toxic substance”, “deleterious substance”, “contaminant”,

“pollutant”, “toxic pollutant” or words of similar meaning and regulatory effect under any applicable Environmental Law; and

- (c) any other material or substance, the exposure to which is prohibited, limited or regulated by any applicable Environmental Law;

“**Holdback Amount**” has the meaning set forth in Section 2.1(6);

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

“**Income Tax**” means any federal, provincial, territorial, municipal or foreign tax (i) imposed or based upon, measured by or calculated with respect to net income, income as specially defined, earnings, gross or net profits or selected items of income, earnings or profits (including capital gains taxes and minimum taxes); or (ii) based upon, measured by or calculated with respect to multiple bases (including corporate franchise taxes) if one or more of the bases on which such tax may be based, measured by or calculated with respect to, is described in (i), in each case together with any interest, penalties or additions to such tax;

“**Indemnifiable Loss**” has the meaning set forth in Section 7.1(1);

“**Indemnifying Party**” has the meaning set forth in Section 7.1(5);

“**Indemnitee**” means any Collus Indemnitee or Purchaser Indemnitee;

“**Independent Accounting Firm**” has the meaning set forth in Section 2.1(7)(f);

“**Insurance Policies**” has the meaning set forth in Section 5.2(15);

“**Intellectual Property**” means all intellectual property of whatever nature and kind, including patents and patent applications, trademarks and trademark applications, trade names, trading styles, domain names, certification marks, industrial designs and copyrights (whether registered or unregistered and all applications for registration thereof), computer software, information technology, inventions, works, designs, formulae, processes, procedures, know-how, trade secrets, industrial designs and plans, engineering designs and plans, blueprints and as-built plans and specifications, training, operating, safety, maintenance and any other manuals, documentation of procedures and processes, design, user and maintenance information and service records and warranty records;

“**Interim Period**” means the period from and including the date of this Agreement to and including the Closing Date or the earlier termination date of this Agreement;

“**Leased Property**” means all leasehold interests in real property held by the Corporation and the Subsidiaries;

“**MAAD Application**” has the meaning set forth in Section 6.2(3);

“**Material**” means of such a nature or amount as would reasonably be expected to influence or change a decision relating to the business or operations of that Person, and “**Materially**” and “**Materiality**” have corresponding meanings;

“**Material Adverse Change**” or “**Material Adverse Effect**” with respect to any Person 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, operations, assets, liabilities, capital, prospects, condition (financial or otherwise) or results of operation of that Person; or
- (b) materially and adversely affects the ability of that Person to conduct its business after the Closing Date substantially as its business has been conducted to the date of this Agreement;

“**Material Contract**” means any Contract in respect of the Business, which expires or may expire, if the same is not renewed or extended at the unilateral option of any other Person, more than one (1) years after the date of this Agreement, and which requires payment (including contingent payments) of more than \$25,000 in aggregate during the term thereof; or any other Contract, the termination of which would result in a Material Adverse Effect on the Corporation or the Subsidiaries, as applicable;

“**MOF**” means the Ontario Ministry of Finance;

“**Mutual Non-Disclosure Agreement**” means the mutual non-disclosure agreement dated the 19<sup>th</sup> day of September, 2011 between the Vendor, Collus and the Purchaser;

“**OBCA**” means the *Business Corporations Act* (Ontario) and the regulations thereto, as amended;

“**OEB**” means the Ontario Energy Board or any successor thereto;

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

“**Ordinary Course**” means, with respect to an action taken by a Person, that the action is consistent with the past practices of the Person and is taken in the normal day-to-day operations of the Person;

“**Parties**” means the parties to this Agreement, and “**Party**” means any one of them;

“**PCBs**” means poly-chlorinated biphenyls;

**“Permits”** mean all permits, licences, certificates, certificates of approval, franchises, registrations, rights, privileges and other consents and approvals of any Governmental Authority;

**“Permitted Encumbrances”** means:

- (a) the Encumbrances;
- (b) statutory liens for any Taxes not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings;
- (c) construction, materialmens’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the Ordinary Course, as to which there is no default on the part of the Corporation or the Subsidiaries, as applicable, or the validity of which is being contested in good faith by appropriate proceedings;
- (d) any Encumbrance evidenced by a *Personal Property Security Act* (Ontario) financing statement filed prior to the date of this Agreement to the extent the Encumbrance does not secure an amount in excess of the amount outstanding and secured at the date of this Agreement unless it is a purchase money security interest incurred in the Ordinary Course; and
- (e) such other security interests, liens, imperfections in or failures of title, charges, restrictions, encroachments and defects in title which do not materially, individually or in the aggregate, detract from the value of the Corporation or the Subsidiaries, as the case may be, nor, individually or in the aggregate, result in a Material Adverse Effect;

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

**“PILS”** means payments in lieu of Taxes payable by Collus pursuant to Section 93 of the *Electricity Act*;

**“Promissory Note”** means the promissory note in the amount of \$1,710,170.00 dated October 31, 2000 and given by Collus to the Vendor, a copy of which Promissory Note is attached as Schedule A to this Agreement;

**“Promissory Note Repayment”** has the meaning set forth in Section 2.1(2)(d);

**“Public Announcement”** has the meaning set forth in Section 6.3(5);

**“Purchased Shares”** has the meaning set forth in the recital hereto;

**“Purchaser”** has the meaning set forth in the recitals hereto;

**“Purchaser Indemnitee”** has the meaning set forth in Section 7.1(1);

**“Purchaser’s Proposed Calculations”** has the meaning set forth in Section 2.1(7)(e);

**“Real Property”** means all real property (excluding Leased Property and Easements) that is owned by the Corporation or the Subsidiaries;

**“Recapitalization Dividends”** has the meaning set forth in Section 2.1(2)(b);

**“Recapitalization Dividend Amount”** has the meaning set forth in Section 2.1(2)(b);

**“Regulatory Assets”** has the meaning set forth in the OEB Accounting Procedures Handbook for Electric Distribution Utilities, dated January 1, 2000 and revised July 31, 2007, or as otherwise disclosed in the 2010 Financial Statements;

**“Regulatory Liabilities”** means have the meaning set forth in the OEB Accounting Procedures Handbook for Electric Distribution Utilities, dated January 1, 2000 and revised July 31, 2007, or as otherwise disclosed in the 2010 Financial Statements;

**“Release”** means any release, spill, leak, emission, discharge, leaching, dumping, escape or other disposal;

**“Remaining Disputed Items”** has the meaning set forth in Section 2.1(7)(f);

**“Representatives”** of a Party means its Affiliates and directors, officers, employees, agents, partners and advisors of the party and/or its Affiliates (including external accountants, lawyers, environmental consultants, financial advisors and other authorized representatives);

**“RFP”** has the meaning set forth in the recitals hereto;

**“Schedule”** means a Schedule to this Agreement as identified in Section 1.2;

**“Service Agreement”** has the meaning given to it in the Affiliate Relationships Code;

**“Shareholders’ Agreement”** means the shareholders’ agreement to be entered into between the Vendor, the Purchaser and the Corporation dated as of the Closing Date, which is attached as Schedule B hereto;

**“Share Purchase Price”** has the meaning given to it in Section 2.1(2)(a);

**“Solutions”** has the meaning set forth in the recitals hereto;

**“Subsidiaries”** has the meaning given to it in the recitals hereto;

**“Tax Act”** means the *Income Tax Act* (Canada) and the regulations thereto, as amended;

**“Taxes”** means all Income Taxes and all capital taxes, gross receipts taxes, surtaxes, environmental taxes, sales taxes, use taxes, ad valorem taxes, value added taxes, excise

taxes, transfer taxes (including land transfer taxes and Transfer Tax), franchise taxes, license taxes, withholding taxes, payroll taxes, health taxes and premiums, employment taxes, Canada Pension Plan premiums, severance, social security premiums, workers' compensation premiums, employment or unemployment insurance or compensation premiums, stamp taxes, occupation taxes, premium taxes, property taxes, windfall profits taxes, alternative or add-on minimum taxes, goods and services taxes (including the Harmonized Sales Tax), customs duties, rates, levies, all special payments and PILS pursuant to Part V.1 and Part VI of the *Electricity Act* and the regulations thereto and all other taxes, fees, imposts, duties, assessments or charges of any kind whatsoever imposed by any Governmental Authority, and any interest, penalties, additions to tax and other additional amounts imposed with respect to the foregoing;

“**Third Party**” has the meaning set forth in Section 7.2(5);

“**Third Party Claim**” has the meaning set forth in Section 7.2(1);

“**Third Party Consents**” means declarations, notices to, or authorizations, consents, waivers, approvals or permissions of, any Person;

“**Transfer Tax**” means the tax payable pursuant to Section 94 of the *Electricity Act* or any similar tax or replacement or substitution thereof;

“**Transaction**” has the meaning set forth in the recitals hereto;

“**Vendor**” has the meaning set forth in the recitals hereto;

“**Vendor's Representative**” means KPMG;

“**Working Capital**” has the meaning set forth in Section 2.1(7);

“**Working Capital Adjustment**” has the meaning set forth in Section 2.1(7)(b);

“**Working Capital Adjustment Documents**” has the meaning set forth in Section 2.1(7)(a);

“**Working Capital Deficiency**” means the amount by which the Working Capital set forth in the Final 2011 Financial Statements of Collus exceeds the Working Capital set forth in the Closing Date Financial Statements of Collus; and

“**Working Capital Surplus**” means the amount by which the Working Capital set forth in the Closing Date Financial Statements of Collus exceeds the Working Capital set forth in the Final 2011 Financial Statements of Collus.

## 1.2 Schedules

The following schedules which are attached to this Agreement are incorporated into this Agreement by reference and form hereof:

<u>Schedule Number</u>	<u>Schedule Title</u>
Schedule A	Promissory Note
Schedule B	Shareholders' Agreement
Schedule C	Recapitalization Dividends and Working Capital Adjustment Calculations
Schedule D	Escrow Agreement
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Schedule 5.2(21)	Service Agreements

### **1.3 Interpretation Not Affected by Headings**

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

### **1.4 Number and Gender**

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

### **1.5 Generally Accepted Accounting Principles**

Except as otherwise specifically provided in this Agreement, all accounting terms shall be applied and construed in accordance with generally accepted accounting principles consistently applied. References in this Agreement to "**generally accepted accounting**

**principles**” or “**GAAP**” mean, for all principles stated from time to time in the Handbook of the Canadian Institute of Chartered Accountants, the principles as so stated.

## **1.6 Statutes and Agreement**

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

## **1.7 Currency**

Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in Canadian currency.

## **ARTICLE 2** **PURCHASE OF SHARES**

### **2.1 Purchase of Shares**

- (1) All actions to be completed by each Party to give effect to the Transaction, including delivery of all documents required by either Party pursuant to the terms of this Agreement, shall be completed on or before the Closing Date.
- (2) Subject to and conditional upon the terms and conditions of this Agreement, including but not limited to Section 6.2(2), the Parties agree that the Vendor shall sell to the Purchaser, and the Purchaser shall purchase from the Vendor, the Purchased Shares for the Share Purchase Price, as defined below, and the Vendor will receive the following payments as a result of the Transaction:
  - (a) \$8,000,000.00 (the “**Share Purchase Price**”) payable to the Vendor on the Closing Date, by wire transfer or as otherwise mutually agreed to by the Parties;
  - (b) a recapitalization dividend amount (the “**Recapitalization Dividend Amount**”) calculated based on the Final 2011 Financial Statements of Collus in accordance with Schedule C, and adjusted in accordance with the Working Capital Adjustment provided for in Section 2.1(7) (the “**Final Recapitalization Dividend Amount**”), as provided for in Section 2.1(5), and, for greater certainty, the Recapitalization Dividend may, on the agreement of the Parties, be paid as dividends and/or a return of share capital resulting in a corresponding reduction in legal stated capital of Collus and the Corporation (the “**Recapitalization Dividends**”);
  - (c) an additional closing dividend amount (the “**Additional Closing Dividend Amount**”) based on the Final 2011 Financial Statements excluding Collus calculated in accordance with Schedule E hereto and adjusted in accordance with



the Working Capital Adjustment provided for in Section 2.1(7) (the “**Final Additional Closing Dividend Amount**”), as provided for in Section 2.1(4) (the “**Additional Closing Dividends**”); and

(d) \$1,710,170.00, provided in accordance with Section 2.1(3) (the “**Promissory Note Repayment**”).

- (3) **Promissory Note Repayment:** Either prior to the Closing Time or after the Closing Time, Collus shall, at the sole and absolute discretion of the Vendor, provide to the Vendor the Promissory Note Repayment, either in full or in part, and if in full then in full and final repayment of the Promissory Note, which shall be cancelled by the Vendor upon such full and final repayment, and if in part then in partial repayment of the Promissory Note, the amount owing under which will be adjusted to reflect the partial repayment by Collus in accordance with this Section 2.1(3).

In the event the Promissory Note Repayment is not completed prior to the Closing Time, then Collus shall provide not less than sixty (60) days prior written notice to the Purchaser of its intention to effect the Promissory Note Repayment. The interest rate on the Promissory Note shall, to the extent the Promissory Note Repayment has not been completed in full, be maintained at its current rate through 2012, reducing to 5.58% per annum through the end of 2013, and thereafter at such other interest rate as is deemed compliant with the OEB Regulations.

- (4) **Additional Closing Dividends:** Prior to the Closing Time, Solutions (and Energy, if applicable in accordance with Schedule E hereto) shall declare a dividend in the aggregate amount of the Additional Closing Dividend Amount to the Corporation and, immediately thereafter (also prior to the Closing Time), the Corporation shall declare a dividend in same amount to the Vendor. The Corporation and the Vendor shall do all such things and authorize and execute all such resolutions required to effect the Additional Closing Dividends by Solutions, Energy (if applicable) and the Corporation, as applicable. Such Additional Closing Dividends may be, at the sole and absolute discretion of Solutions, Energy, if applicable, the Corporation and the Vendor, paid to the Corporation and the Vendor, respectively, before or after the Closing Time notwithstanding that it was declared prior to the Closing Time.
- (5) **Recapitalization Dividends:** Prior to the Closing Time, Collus shall declare a dividend to the Corporation in the amount of the Recapitalization Dividend Amount to the Corporation and, immediately thereafter (also prior to the Closing Time), the Corporation will declare a dividend to the Vendor in the amount of the Recapitalization Dividend Amount. The Corporation and the Vendor shall do all such things and authorize and execute all such resolutions required to effect the Recapitalization Dividends by Collus and the Corporation, as applicable. Subject to Section 2.1(6), such Recapitalization Dividends, shall be paid to the Corporation and the Vendor, respectively, before or after the Closing Time (but in any event not later than 60 days thereafter), at the discretion of Collus, the Corporation and the Vendor, notwithstanding that it was declared prior to the Closing Time.

(6) **Holdback Amount:** The Parties agree that the Vendor's legal counsel will hold in escrow, in a non-interest bearing account in accordance with the Escrow Agreement, an amount of \$1,000,000.00 (the "**Holdback Amount**") which amount will constitute the portion of the Recapitalization Dividend Amount and the Additional Closing Dividend Amount held back from the dividends paid pursuant to Section 2.1(4) and Section 2.1(5), respectively, for the purposes of the Working Capital Adjustment and will be provided to the Vendor's legal counsel by Collus on payment of the Recapitalization Dividends, as provided for in this Section 2.1(6).

(7) **Working Capital Adjustment:**

(a) Within 60 days after Closing, the Vendor shall cause the Corporation's accountants to prepare and deliver to the Purchaser:

(i) the Closing Date Financial Statements;

(ii) a statement of the Working Capital as at Closing based on the Closing Date Financial Statements and in accordance with the provisions of this Agreement (the "**Closing Working Capital Statement**");

(iii) a statement of the calculation of the Working Capital Deficiency or Working Capital Surplus, if any, the Final Recapitalization Dividend Amount, based thereon, and the Final Additional Closing Dividend Amount (collectively, the "**Final Calculation Statement**");

calculated in accordance with Schedule C and Schedule E hereto (collectively, the "**Working Capital Adjustment Documents**").

(b) The Closing Date Financial Statements and the Final Calculation Statement shall be prepared in accordance with GAAP, applied in a manner consistent with past practice. The Final Calculation Statement shall provide a statement (the "**Working Capital Adjustment**") of the Final Recapitalization Dividend Amount, based on the Working Capital Deficiency or Working Capital Surplus, if any, and the Final Additional Closing Dividend Amount consistent with the terms of Schedule E. The Corporation shall fully co-operate and assist in the preparation of the Final Calculation Statement and Closing Date Financial Statements as reasonably requested by the Vendor.

(c) The cost of preparing the Working Capital Adjustment Documents shall be accrued in the Closing Date Financial Statements as a Current Liability.

(d) Within 45 days after its receipt of the Working Capital Adjustment Documents, the Purchaser shall notify the Vendor's Representative in writing of its agreement or disagreement with the Working Capital Adjustment Documents (and during such 45-day period, the Vendor's Representative and the Corporation shall grant to the Purchaser and its accountants reasonable access to all work papers,

facilities, schedules and calculations used in the preparation of the Working Capital Adjustment Documents and provide access to the Corporation's accountants who prepared such work papers, schedules and calculations).

- (e) If the Purchaser disputes any aspect of the Working Capital Adjustment Documents within such 45-day period, then the Purchaser shall have the right, and shall have the right to direct the Purchaser's accountants, at the Purchaser's expense, to review and verify the accuracy of the Working Capital Adjustment Documents. If the Purchaser does not dispute any aspect of the Working Capital Adjustment Documents within such 45-day period, then the Working Capital Adjustment Documents shall be conclusive and binding upon the Purchaser and the Vendor. In the event of a dispute, the Purchaser and, at its option, the Purchaser's accountants, shall complete their review and verification of the Working Capital Adjustment Documents within 45 days of the Purchaser's receipt thereof and, if the Purchaser or the Purchaser's accountants, after such review and verification, still disagree with the Working Capital Adjustment Documents, the Purchaser shall submit its proposed alternative calculations (the "**Purchaser's Proposed Calculations**") of the Working Capital Adjustment Documents in writing to Vendor within 45 days after the Purchaser's receipt of the Working Capital Adjustment Documents.
- (f) If the Vendor's Representative does not reject the Purchaser's Proposed Calculations by written notice given to the Purchaser within 30 days after the Vendor's Representative's receipt of the Purchaser's Proposed Calculations, then the Working Capital Adjustment Documents, as modified by the Purchaser's Proposed Calculations, shall be conclusive and binding upon the Purchaser and the Vendor. If the Vendor's Representative rejects the Purchaser's Proposed Calculations by written notice given to the Purchaser within 30 days after the Vendor's Representative's receipt of the Purchaser's Proposed Calculations, then, within 15 days after the date that the Vendor's Representative delivers its written notice of rejection to the Purchaser, the Parties shall jointly select a mutually acceptable and recognized independent accounting firm (such firm, the "**Independent Accounting Firm**") to resolve the remaining disputed items (the "**Remaining Disputed Items**") by conducting an independent review and verification of the Working Capital Adjustment Documents, and thereafter selecting either the Purchaser's calculations of the Remaining Disputed Items (as reflected in the Final Calculation Statement), or the Vendor's calculations of the Remaining Disputed Items, or an amount in between the two. The Vendor and the Purchaser shall be bound by the determination of the Remaining Disputed Items by the Independent Accounting Firm. Each of the Purchaser and the Vendor agrees to execute, if requested by the Independent Accounting Firm, an engagement letter containing reasonable and customary terms. The Independent Accounting Firm shall act as arbitrator to determine only the Remaining Disputed Items and the determination of each amount of the Remaining Disputed Items shall be made in accordance with the procedures set forth in this Section 2.1(7)(f).

- (g) Except as contemplated in Section 2.1(7)(c), the Purchaser and the Vendor shall each pay their own expenses incurred under this Section 2.1(7). The costs and expenses of the Independent Accounting Firm shall be allocated equally between the Purchaser and the Vendor.
- (h) Upon the determination, in accordance with this Section 2.1(7), of the Final Calculation Statement and the final calculations of the Closing Working Capital Statement and the Working Capital Deficiency or Working Capital Surplus, if any, the Final Recapitalization Dividend Amount and the Final Additional Closing Dividend Amount, the **“Final Dividend Adjustment Amount”** will be determined by the following equation:
- (i) the Final Recapitalization Dividend Amount minus the Recapitalization Dividend Amount; plus
  - (ii) the Final Additional Dividend Amount minus the Additional Dividend Amount.
- (i) If the Final Dividend Adjustment Amount is less than \$0, the Vendor and the Purchaser shall, in accordance with the Escrow Agreement, direct the Vendor’s legal counsel to release an amount of the Holdback Amount equal to the Final Dividend Adjustment Amount (or, if the Dividend Adjustment Amount is greater than the Holdback Amount, an amount equal to the Holdback Amount) to the Corporation and Collus (or the applicable Subsidiary in the case of an adjustment of the Additional Closing Dividend), with the balance (or if the Final Dividend Adjustment Amount is negative, then nil) released to the Vendor as the balance of payment on the Recapitalization Dividends (or Additional Closing Dividend, if applicable).
- (j) If the Final Dividend Adjustment Amount is greater than or equal to \$0, the Vendor and the Purchaser shall, in the accordance with the Escrow Agreement, direct the Vendor’s legal counsel to release the Holdback Amount to the Vendor, and as soon as practicable thereafter Collus shall pay such amount to the Corporation (or the applicable Subsidiary in the case of an adjustment of the Additional Closing Dividend), which will in turn, as soon as practicable, pay such amount to the Vendor as the balance of payment on the Recapitalization Dividends (or Additional Closing Dividend, if applicable).
- (k) If the Final Dividend Adjustment Amount is less than negative \$1,000,000.00, then Vendor shall pay the absolute value of such difference to Collus.
- (l) Any payments made pursuant to (i) or (j) above by the Vendor’s legal counsel shall be made by certified cheque or wire transfer of immediately available funds and shall be deemed to be adjustments to the Recapitalization Dividend Amount and the Additional Closing Dividends, as applicable, for all Tax purposes.

- (m) For the purposes of this Article 2, “**Working Capital**” means the amount calculated by subtracting the Current Liabilities from the Current Assets, consistent with the terms of Schedule C and Schedule E.

**ARTICLE 3**  
**THE CLOSING**

**3.1 Closing**

Subject to the terms and conditions of this Agreement, the Closing of the Transaction shall take place at the Closing Time on the Closing Date at the Toronto offices of Aird & Berlis LLP.

**3.2 Closing Deliveries of the Vendor**

At Closing, the Vendor shall deliver, or cause to be delivered, to the Purchaser the following:

- (a) new share certificates, representing the Purchased Shares, in the name of the Purchaser;
- (b) copies of updated share registers and share transfer ledgers, reflecting the purchase by the Purchaser of the Purchased Shares;
- (c) the opinion of counsel contemplated by Section 4.1(1)(d);
- (d) copies of any and all Third Party Consents required to be obtained by the Vendor, the Corporation and the Subsidiaries with respect to the Transaction;
- (e) a certificate of a senior officer of each of the Vendor, the Corporation, Collus and Solutions, dated as of the Closing Date, certifying that:
  - (i) in respect of the certificate of each of the Vendor and the Corporation only, the representations and warranties of each of the Vendor and the Corporation herein are true and correct in all respects as at the Closing, or where any representation and warranty is qualified by Materiality, such representation and warranty is true and correct in all Material respects as at the Closing;
  - (ii) the Vendor, the Corporation, Collus and Solutions have complied in all Material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by each of them on or prior to the Closing;
- (f) copies of the corporate resolutions of the Vendor, the Corporation, Collus and Solutions certified by a respective director or senior officer of the Vendor, the Corporation, Collus and Solutions authorizing the execution, delivery and

performance of this Agreement and all other agreements and instruments to be executed and delivered by the Vendor, the Corporation, Collus and Solutions in connection with this Agreement and completion of the Transaction;

- (g) a certificate of status for each of the Vendor, the Corporation, Collus and Solutions under the laws of Ontario;
- (h) a certificate of incumbency for each of the Vendor, the Corporation, Collus and Solutions;
- (i) a copy of the Shareholders' Agreement executed by the Vendor and the Corporation;
- (j) updated disclosure schedules hereto to reflect changes arising in the ordinary course of business; provided, however, that the Purchaser shall not be required to accept any such updated which, individually or in the aggregate would result in a Material Adverse Change to the Corporation, acting reasonably;
- (k) a copy of the Escrow Agreement executed by the Vendor and the Corporation;
- (l) draft articles of amendment to change the name of the Corporation and each of the Subsidiaries to include "Collus PowerStream", or as otherwise agreed to by the Parties, which draft articles of amendment shall be filed with effect as of the Closing Date; and
- (m) such other documentation as the Purchaser may reasonably request in order to effect the completion of the Transaction and the taking of all corporate proceedings in connection with the Transaction, in each case in form and substance satisfactory to the Purchaser, acting reasonably.

### **3.3 Purchaser Closing Deliveries**

At Closing, the Purchaser shall deliver, or cause to be delivered, to the Vendor and the Corporation the following:

- (a) the opinion of counsel contemplated by Section 4.2(1)(d);
- (b) copies of any and all Purchaser Third Party Consents required to be obtained by the Purchaser with respect to the Transaction;
- (c) a certificate of a senior officer of the Purchaser dated as of the Closing Date certifying that:
  - (i) the representations and warranties of the Purchaser herein are true and correct in all respects as at the Closing, or where any representation and warranty is qualified by Materiality, such representation and warranty is true and correct in all Material respects at the Closing;

- (ii) the Purchaser has complied in all Material respects with the covenants and agreements contained in this Agreement which are required to be performed and complied with by each of them on or prior to the Closing;
- (d) copies of the corporate resolutions of the Purchaser, certified by a director or senior officer of the Purchaser, respectively, authorizing the execution, delivery and performance of this Agreement and all other agreements and instruments to be executed and delivered by the Purchaser in connection with this Agreement and completion of the Transaction;
- (e) a certificate of status for each of the Purchaser under the laws of Ontario;
- (f) a certificate of incumbency of the Purchaser;
- (g) a copy of the Shareholders' Agreement executed by the Purchaser;
- (h) a copy of the Escrow Agreement executed by the Purchaser; and
- (i) such other documentation as the Purchaser may reasonably request in order to effect the completion of the Transaction and the taking of all corporate proceedings in connection with the Transaction, in each case in form and substance satisfactory to the Corporation and Collus, acting reasonably.

#### **ARTICLE 4**

#### **CONDITIONS OF CLOSING**

##### **4.1 Conditions in Favour of the Vendor and the Corporation**

- (1) The Vendor and the Corporation shall be obliged to complete the Transaction only if each of the following conditions precedent has been satisfied in full at or before the Closing Time (each of which conditions precedent is acknowledged to be for the exclusive benefit of the Vendor and the Corporation):
  - (a) all of the representations and warranties of the Purchaser made in or pursuant to this Agreement shall be true and correct as at the Closing Time with the same effect as if made at and as of the Closing Time (except as those representations and warranties may be affected by events or transactions (i) expressly permitted by this Agreement, or (ii) approved in writing by the Vendor and the Corporation);
  - (b) the Purchaser shall have complied with or performed all of the obligations, covenants and agreements under this Agreement to be complied with or performed by the Purchaser or any of them at or before the Closing Time, including the Closing deliveries specified in Section 3.3 and the covenants in Section 6.2;

- (c) all Third Party Consents described in Schedule 4.1(1)(c) shall have been obtained, in each case in form and substance satisfactory to the Vendor and the Corporation, acting reasonably; and
  - (d) the Vendor and the Corporation shall have received a favourable opinion from legal counsel to the Purchaser dated the Closing Date, and satisfactory in form and substance to the Vendor and the Corporation, acting reasonably, as to the due authorization, execution, delivery and enforceability of this Agreement, the Shareholders' Agreement and as to the Transaction.
- (2) If any of the conditions in Section 4.1(1) shall not be satisfied or fulfilled in full at or before the Closing Time to the satisfaction of the Vendor and the Corporation, acting reasonably, the Vendor and the Corporation in their sole discretion may, without limiting any rights or remedies available to the Vendor and the Corporation at law or in equity, either:
- (a) terminate this Agreement by notice in writing to the Purchaser, except with respect to the obligations contained in Sections 6.3(4) and 6.3(5) which shall survive that termination; or
  - (b) waive compliance with any such condition in whole or in part by notice in writing to the Purchaser, except that no such waiver shall operate as a waiver of any other condition.

#### **4.2 Conditions in Favour of the Purchaser**

- (1) The Purchaser shall be obliged to complete the Transaction only if each of the following conditions precedent has been satisfied in full at or before the Closing Time (each of which conditions precedent is acknowledged to be for the exclusive benefit of the Purchaser):
- (a) all of the representations and warranties of the Vendor and the Corporation made in or pursuant to this Agreement shall be true and correct as at the Closing Time with the same effect as if made at and as of the Closing Time (except as those representations and warranties may be affected by events or transactions (i) expressly permitted by this Agreement, or (ii) approved in writing by the Purchaser);
  - (b) each of the Vendor and the Corporation shall have complied with or performed all of the obligations, covenants and agreements under this Agreement to be complied with or performed by the Vendor and the Corporation or any of them at or before the Closing Time, including the Closing deliveries specified in Section 3.2 and the covenants in Section 6.1;



- (c) all the Purchaser Third Party Consents described in Schedule 4.2(1)(c) shall have been obtained, in each case in form and substance satisfactory to the Purchaser, acting reasonably;
  - (d) the Purchaser shall have received a favourable opinion from legal counsel to the Vendor and the Corporation dated the Closing Date, and satisfactory in form and substance to the Purchaser, acting reasonably, as to the due authorization, execution, delivery, and enforceability of this Agreement, the Shareholders' Agreement and as to the Transaction.
- (2) If any of the conditions in Section 4.2(1) shall not be satisfied or fulfilled in full at or before the Closing Time to the satisfaction of the Purchaser, acting reasonably, the Purchaser in its sole discretion may, without limiting any rights or remedies available to the Purchaser at law or in equity, either:
- (a) terminate this Agreement by notice in writing to the Vendor and the Corporation, except with respect to the obligations contained in Sections 6.3(4) and 6.3(5) which shall survive that termination; or
  - (b) waive compliance with any such condition in whole or in part by notice in writing to the Vendor and the Corporation, except that no such waiver shall operate as a waiver of any other condition.

#### **4.3 Mutual Conditions**

The obligations of each of the Parties to complete the Transaction shall be subject to the fulfilment of all of the following conditions on or before the Closing Date:

- (1) there shall be no injunction or restraining order issued preventing, and no pending or threatened Claim, against any Party, for the purpose of enjoining or preventing the completion of the Transaction or otherwise claiming that this Agreement or the completion of the Transaction is improper or would give rise to a Claim under any Applicable Law;
- (2) no Applicable Law shall have been enacted, introduced or announced which prohibits the Transaction or has a Material Adverse Effect in respect of the Vendor or the Purchaser or will have a Material Adverse Effect in respect of the Corporation or the Subsidiaries after the Transaction;
- (3) the OEB shall have approved the Transaction in accordance with the MAAD Application provided that no terms or conditions required by the OEB in connection therewith shall have a Material Adverse Effect on either the Vendor, the Purchaser, the Corporation or the Subsidiaries;
- (4) no Transfer Tax or special payment under Part VI of the Electricity Act as a result of the Transaction is payable by a Party;

- (5) the Parties will have reviewed and amended or confirmed the Service Agreements, as provided for in Section 6.3(8).
- (6) Collus shall have secured financing for the Transaction satisfactory to the Parties, which funds will be available prior to or at the Closing Date to facilitate the Recapitalization Dividends and the Promissory Note Repayment, as required by Section 2.1.
- (7) the Vendor will have prepared and will have caused each of the Corporation and the Subsidiaries to prepare the Final 2011 Financial Statements, in a form satisfactory to Purchaser, acting reasonably.

#### **4.4 Termination**

- (1) This Agreement may be terminated at any time prior to Closing by mutual written consent of the Parties.
- (2) This Agreement may be terminated by the Vendor, the Corporation or the Purchaser by written notice to the other Party if the Closing contemplated by this Agreement shall have not occurred on or before December 31, 2012 or such later date as may be mutually agreed by the Parties in writing and thereupon the Parties shall be released from all obligations then remaining under this Agreement, other than the obligations contained in Sections 6.3(4) and 6.3(5), provided that the right to terminate this Agreement under this Section 4.4(2) shall not be available to a Party if the acts or omissions of that Party or any of its Affiliates have been the cause of, or result in, the failure of the Closing to occur on or before such date.
- (3) If any condition in Section 4.1 or 4.3 is not satisfied on or before the Closing Date, the Vendor and the Corporation may, by notice to the Purchaser, terminate this Agreement and thereupon the Parties shall be released from all obligations then remaining under this Agreement, other than the obligations contained in Sections 6.3(4) and 6.3(5); provided that the Vendor and the Corporation may also bring a Direct Claim against the Purchaser in accordance with Section 7.2(9) for Indemnifiable Losses asserted against or suffered by the Vendor and the Corporation, or any of them, as a result of the failure to Close the Transaction, where the non-performance or non-conformance of the relevant condition is as a result of a breach of covenant, representation or warranty by the Purchaser, or either of them.
- (4) If any condition in Section 4.2 or 4.3 is not satisfied on or before the Closing Date, the Purchaser may, by notice to the Vendor and the Corporation, terminate this Agreement and thereupon the Parties shall be released from all obligations then remaining under this Agreement, other than the obligations contained in Sections 6.3(4), and 6.3(5); provided that the Purchaser may also bring a Direct Claim against the Vendor and the Corporation in accordance with Section 7.1(8) for Indemnifiable Losses asserted against or suffered by the Purchaser, or either of them, as a result of the failure to close the Transaction, where the non-performance or non-conformance of the relevant condition is as a result of

a breach of covenant, representation or warranty by the Vendor and the Corporation, or any of them.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES**

**5.1 Representations and Warranties of the Vendor with Respect to the Vendor**

The Vendor hereby represents and warrants to the Purchaser as to itself as follows and acknowledges that, except as otherwise expressly provided herein, the Purchaser is relying on these representations and warranties in connection with this Agreement and the Transaction:

- (1) Organization and Status. It is a body corporate incorporated under the *Municipal Act, 2001* (Ontario)
- (2) Corporate Power. The Vendor is a municipal corporation and has all requisite statutory power, authority and capacity to enter into, and to perform its obligations under, this Agreement and to transfer the legal and beneficial title and ownership of the Purchased Shares to the Purchaser free and clear of all Encumbrances. The Vendor has duly taken, or has caused to be taken, all action required to be taken by the Vendor to authorize the execution and delivery of this Agreement by the Vendor and the performance of its obligations hereunder, in respect of the Vendor and to pass the Transfer By-law.
- (3) Enforceability. This Agreement has been duly executed and delivered by it and (assuming due execution and delivery by the other Parties) is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.
- (4) Bankruptcy. It is not an insolvent Person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof, and no petition for a receiving order has been presented in respect of it. It has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver or interim receiver has been appointed in respect of it or any of its undertakings, property or assets and no execution or distress has been levied on any of its undertakings, property or assets, nor have any proceedings been commenced in connection with any of the foregoing.
- (5) No Violations. Neither the execution nor delivery of this Agreement nor the completion of the transactions herein contemplated will result in the violation of:
  - (a) any provision of the by-laws of the Vendor,

- (b) any Contract to which the Vendor is a party or by which the Vendor or any of their respective properties or assets is bound, which would have a Material Adverse Effect on the Vendor's ability to perform its obligations under this Agreement; or
- (c) subject to obtaining the regulatory approvals set forth in Section 4.3(3), any terms or provisions of any Applicable Law of any Governmental Authority having jurisdiction over the Vendor which would have a Material Adverse Effect on the Vendor's ability to perform its obligations under this Agreement.

## **5.2 Representations and Warranties of the Vendor and the Corporation with respect to the Corporation and the Subsidiaries**

Each of the Vendor and the Corporation represents and warrants to the Purchaser, except as expressly provided for herein, on a joint and several basis, as follows and acknowledges that the Purchaser is relying on these representations and warranties in connection with this Agreement and the Transaction:

- (1) Organization and Status. The Corporation is a corporation duly incorporated and organized, and is validly subsisting, under the laws of Ontario and has the corporate power to own or lease the property and assets transferred to it pursuant to the Collingwood Transfer By-law and to carry on the Business.
- (2) Authorized and Issued Capital of the Corporation. On Closing, the authorized share capital of the Corporation shall be an unlimited number of common shares, of which 5,101,640 common shares are duly issued and outstanding as fully paid non-assessable shares to the Vendor. The Corporation has no outstanding rights, options or warrants to acquire equity capital.
- (3) Authorized and Issued Capital of the Subsidiaries. On Closing, the authorized share capital of each of the Subsidiaries is an unlimited number of common shares, of which 5,101,340 common shares in Collus, 100 common shares in Solutions and 100 common shares in Energy are duly issued and outstanding as fully paid non-assessable shares to the Corporation. None of the Subsidiaries has outstanding rights, options or warrants to acquire equity capital.
- (4) Ownership of Purchased Shares. On Closing, the Vendor shall be the beneficial and registered owner of the Purchased Shares, with good and marketable title thereto, free and clear of all Encumbrances (other than the rights of the Purchaser hereunder) and shall have the exclusive right to dispose of the Purchased Shares as herein provided. Without limiting the generality of the foregoing, none of the Purchased Shares on Closing will be subject to any voting trust, shareholder agreement or voting agreement. On Closing, the Corporation shall be the beneficial and registered owner of the issued and outstanding shares of the Subsidiaries, with good and marketable title thereto, free and clear of all Encumbrances. Without limiting the generality of the foregoing, none of the issued and

outstanding shares of the Subsidiaries on Closing will be subject to any voting trust, shareholder agreement or voting agreement.

- (5) No Other Agreements to Purchase. No Person (other than the Purchaser under this Agreement) has any Contract or any right or privilege (whether by law, pre-emptive or contractual) binding upon or which at any time in the future may become binding upon the Vendor to acquire or obtain in any other way an interest in any of the Purchased Shares or to require the Corporation to allot or issue any shares. No Person has any Contract or any right or privilege (whether by law, pre-emptive or contractual) binding upon or which at any time in the future may become binding upon the Corporation to acquire or obtain in any other way an interest in the any of the issued and outstanding shares of the Subsidiaries or to require the Subsidiaries to allot or issue any shares in any of the Subsidiaries.
- (6) No Violations. Neither the execution nor delivery of this Agreement nor the completion of the transactions herein contemplated will result in the violation of:
- (a) any provision of the by-laws of the Vendor, the Corporation or the Subsidiaries,
  - (b) any Contract to which the Vendor, the Corporation or any of the Subsidiaries is a party or by which the Vendor, the Corporation or any of their respective properties or assets is bound, which would have a Material Adverse Effect on the Vendor's ability to perform its obligations under this Agreement; or
  - (c) subject to obtaining the regulatory approvals set forth in Section 4.3(3), any terms or provisions of any Applicable Law of any Governmental Authority having jurisdiction over the Vendor, the Corporation or any Subsidiaries which would have a Material Adverse Effect on the Vendor, the Corporation or any Subsidiary's ability to perform its obligations under this Agreement.
- (7) Consents and Approvals. Except as set out in Schedule 4.1(1)(c), there is no requirement for the Vendor, the Corporation or any Subsidiary to make any filing with, give any notice to or obtain any licence, permit, certificate, registration, authorization, consent or approval of, any governmental or regulatory authority as a condition to the lawful consummation of the transactions contemplated by this Agreement.
- (8) Compliance with Applicable Laws. The Corporation and each of the Subsidiaries has complied in all material respects with all Applicable Laws applicable to the Business, the failure to comply with which, either individually or in the aggregate, would have a Material Adverse Effect.
- (9) Real Property. Schedule 5.2(9) sets forth a list of Real Property in which the Corporation and any Subsidiaries has an interest including lands owned in fee simple, together with all Leased Property. Schedule 5.2(9) is complete and accurate and the Corporation has good title to such interests in owned Real Property, and all leases for such Leased Property are in good standing, subject only in each case to Permitted Encumbrances;

- (10) Intellectual Property. Schedule 5.2(10) sets forth and describes all Intellectual Property used in whole or in part by the Business, and all material trademarks, trade names, service marks, brand names, patents, copyrights, industrial designs and other industrial property rights, and all applications therefor, in each case specifying whether the item is owned by the Corporation or any Subsidiaries or is used by the Corporation or any Subsidiaries under a licence agreement or arrangement from another Person.
- (11) Contracts and Commitments. Except as set forth in Schedule 5.2(11), the Corporation and each of the Subsidiaries is not a party to or bound by any of the following:
- (a) any employment or consulting Contract or any other written Contract with any officer, employee or consultant other than oral Contracts of indefinite hire terminable by the employer without cause on such notice or such payment as may be required by Applicable Law;
  - (b) any agreement, contract or commitment limiting the freedom of the Corporation or any Subsidiaries to engage in any line of business or to compete with another Person; or
  - (c) any other Material Contract.

Except in respect of the indebtedness listed in Schedule 5.2(11), the Corporation the Subsidiaries do not have outstanding any indebtedness in respect of borrowed money or guarantees in respect of same.

- (12) Employee Plans. Except as set forth in Schedule 5.2(12), the Corporation and the Subsidiaries are not a party to or bound by or subject to any agreement or arrangement with respect to salaries, wages, bonuses, commissions, fees, retirement, pension, deferred compensation, severance or termination pay, insurance, medical, hospital, dental, vision care, drug, sick leave, disability, salary continuation, legal benefits, unemployment benefits, vacation, incentive or other compensation plan or arrangement or other similar employee benefits (the “**Employee Plans**”).
- (13) Collective Agreement. Except for the Collective Agreement as set out in Schedule 5.2(13), the Corporation and each of the Subsidiaries has not made, and at Closing will not have, any Contracts with any labour union or employee association nor made commitments to or conducted negotiations with any labour union or employee association with respect to any future agreements.
- (14) Employees. Schedule 5.2(14) contains a complete and accurate list of the names of all individuals who are Employees of the Corporation and each of the Subsidiaries specifying unionized Employees, non-unionized Employees, years of service, wages, benefits and title. The Corporation has no unfunded liabilities with respect to its pension plans.

- (15) Insurance. Schedule 5.2(15) sets forth all insurance policies (specifying the insurer, the amount of the coverage, the type of insurance, the policy number and any pending claims thereunder) maintained by the Corporation and each of the Subsidiaries on its property and assets or personnel (the “**Insurance Policies**”).
- (16) Environmental.
- (a) There are no active or abandoned underground storage tanks located on any Real Property or Leased Property, except those that comply with applicable Environmental Laws; and
  - (b) No Release of Hazardous Substances has occurred on or from any Real Property or Leased Property, except those that do not violate applicable Environmental Laws.
  - (c) The Business and Property have been and are being owned, occupied and operated in substantial compliance with applicable Environmental Laws and there are no breaches thereof and no enforcement actions in respect thereof are threatened or pending which, in any such-case, would, either individually or in the aggregate, have, a Material Adverse Effect.
- (17) Litigation. Except as set out in Schedule 5.2(17), there are no actions, suits or proceedings pending or, threatened against or affecting the Corporation or any Subsidiaries at law or in equity, or before or by any federal, provincial, municipal or other governmental department, court, commission, board, bureau, agency or instrumentality, domestic or foreign, or by or before an arbitrator or arbitration board which, either individually or in the aggregate, would have a Material Adverse Effect.
- (18) Taxes. The Corporation and each of the Subsidiaries is exempt from tax under the Tax Act and the Corporations Tax Act (Ontario). There are no audits, actions, assessments, suits, proceedings, investigations or claims pending against the Corporation or any Subsidiaries in respect of Taxes, due to any grounds including aggressive treatment of income, expenses, credits or other amounts in filing its tax returns, nor are there any material matters under discussion with any governmental authority relating to Taxes asserted by any such authority. The Corporation and each Subsidiary is not party to any agreement or undertaking with respect to Taxes.
- (19) Withholding. The Corporation and each Subsidiary has withheld from each payment made to any of its past or present employees, officers or directors, and to any non-resident of Canada, the amount of all Taxes and other deductions required to be withheld therefrom, including without limitation, all employee and employer portions for Workers’ Compensation, Canada Pension Plan, Unemployment Insurance and Employment Insurance and has paid the same to the proper tax or other receiving officers within the time required under any applicable legislation. The Corporation and each Subsidiary has remitted to the appropriate tax authority when required by law to do so all amounts collected by it on account of sales taxes including goods and services tax.

- (20) 2010 Financial Statements. The 2010 Financial Statements, copies of which are attached as Schedule 5.2(20) in all material respects, fairly and accurately reflect the financial position, the assets and liabilities of the Corporation and each of the Subsidiaries as they existed on December 31, 2010 and the results of the operation of its business for the twelve (12) month period ended on the date of the 2010 Financial Statements and have been prepared on a basis consistent with the preceding fiscal years, except where noted in the 2010 Financial Statements.
- (21) Service Agreements. All Service Agreements entered into between the Corporation and or the Vendor, Collus, Energy and Solutions or any of their respective Affiliates, which Service Agreements are listed in Schedule 5.2(21), comply, in all material respects, with the Affiliate Relationships Code.

### **5.3 Representations and Warranties of the Purchaser Relating to the Purchaser**

The Purchaser represents and warrants to the Vendor and the Corporation, except as expressly provided for herein, as to itself as follows and acknowledges that the Vendor and the Corporation are relying on these representations and warranties in connection with this Agreement and the Transaction:

- (1) Organization and Status. The Purchaser is a corporation duly incorporated and organized, and is validly subsisting under, the laws of Ontario.
- (2) Corporate Power. It has all necessary corporate power and authority to own or lease or dispose of its undertakings, property and assets, to enter into this Agreement and Shareholders Agreement and the contracts, agreements and instruments required by this Agreement to be delivered by it, and to perform its obligations hereunder and thereunder.
- (3) Authorization. All necessary corporate action has been taken by it or on its part to authorize its execution and delivery of this Agreement and the contracts, agreements and instruments required by this Agreement to be delivered by it and the performance of its obligations hereunder and thereunder.
- (4) Enforceability. This Agreement has been duly executed and delivered by it and (assuming due execution and delivery by the other Parties) is a legal, valid and binding obligation of it enforceable against it in accordance with its terms, except as that enforcement may be limited by bankruptcy, insolvency and other similar laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction. The Shareholders Agreement and each of the contracts, agreements and instruments required by this Agreement to be delivered by it will at the Closing Time have been duly executed and delivered by it and (assuming due execution and delivery by the other parties thereto) will be enforceable against it in accordance with its terms, except as that enforcement may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally and except that equitable remedies may be granted only in the discretion of a court of competent jurisdiction.



- (5) Bankruptcy. It is not an insolvent Person within the meaning of the *Bankruptcy and Insolvency Act* (Canada) and has not made an assignment in favour of its creditors or a proposal in bankruptcy to its creditors or any class thereof, and no petition for a receiving order has been presented in respect of it. It has not initiated proceedings with respect to a compromise or arrangement with its creditors or for its winding up, liquidation or dissolution. No receiver or interim receiver has been appointed in respect of it or any of its undertakings, property or assets and no execution or distress has been levied on any of its undertakings, property or assets, nor have any proceedings been commenced in connection with any of the foregoing.
- (6) Absence of Conflict. The execution, delivery and performance by it of this Agreement, the Shareholders Agreement and the completion of the Transaction will not (whether after the passage of time or notice or both), result in:
- (a) the Material breach or violation of any of the provisions of, or constitute a default under, or conflict with or cause the acceleration of any of its obligations, under:
    - (i) any Contract to which it is a party or by which any of its undertakings, property or assets is bound or affected;
    - (ii) any provision of its Constatng Documents or resolutions of its board of directors (or any committee thereof) or shareholder;
    - (iii) municipal council; or
    - (iv) any Applicable Law;
  - (b) the requirement of any Purchaser Third Party Consents from any of its creditors.
- (7) Litigation. There are no Claims (whether or not purportedly on its behalf) pending or outstanding or, to its knowledge, threatened against it which could affect its ability to perform its obligations under this Agreement. To the knowledge of the Purchaser, there is not any factual or legal basis on which any such Claim might be commenced with any reasonable likelihood of success.
- (8) Residence. It is not a non-resident of Canada for purposes of the Tax Act.

## **ARTICLE 6** **COVENANTS**

### **6.1 Covenants of the Vendor and the Corporation**

Each of the Vendor and the Corporation covenants and agrees with the Purchaser that each of the Vendor and the Corporation will do or cause to be done the following:

- (1) Conduct Prior to Closing. Without in any way limiting any other obligations of each of the Vendor and the Corporation hereunder, except as specifically provided in this Agreement or with the prior written consent of the Purchaser during the Interim Period:
- (a) the Vendor shall cause the Corporation to conduct the Business and the operations and affairs of the Corporation only in the Ordinary Course, and each of the Vendor and the Corporation shall not, without the prior written consent of the Purchaser, enter into any transaction or refrain from doing any action that, if effected before the date of this Agreement, would constitute a breach of any representation, warranty, covenant or other obligation of each of the Vendor and the Corporation in this Agreement and, without limiting the generality of the foregoing, the Vendor and the Corporation shall cause the Corporation and the Subsidiaries:
- (i) not to amalgamate, merge or consolidate with or acquire or agree to acquire all or substantially all of the shares and assets of any Person, not to acquire or lease or agree to acquire or lease any business operations in any other Person, and not to undertake any distributions or declare any dividends or repay any material loans in respect of the Corporation or any Subsidiaries, other than dividend declarations and repayment of loans contemplated in Article 2 of this Agreement;
- (ii) not to enter into any compromise or settlement of any litigation, proceeding or government investigation relating to the Business or any of the assets of the Corporation;
- (iii) not to make any Material modification to its usual sales, human resource, accounting, software, or management practices, processes or systems, except that the Parties agree that the Vendor, the Corporation and the Subsidiaries shall transfer certain employees from Solutions and Energy to Collus, or as otherwise mutually agreed to by the Parties;
- (iv) to continue to maintain in full force and effect all the Insurance Policies or renewals thereof currently in effect; and
- (v) to report all Claims with a value greater than \$50,000.00 or known circumstances or events which may give rise to a Claim with a value greater than \$50,000.00 to its insurers under the Insurance Policies in a due and timely manner to the Closing Date and to provide copies of those reports to the Purchaser;
- (b) each of the Vendor and the Corporation shall use its respective commercially reasonable efforts to give or obtain or cause the Corporation to give or obtain, and the Corporation shall use its commercially reasonable efforts to obtain, the Third Party Consents described in Schedule 4.1(1)(c);

- (c) each of the Corporation and the Vendor shall use its respective commercially reasonable efforts to preserve, and cause the Vendor to preserve intact its assets and cause the Corporation to preserve intact, the Business, the assets of the Corporation, and the operations and affairs of the Corporation and to carry on the Business and the affairs of the Corporation as currently conducted, and to promote and preserve the goodwill of suppliers, customers and others having business relations with the Corporation;
  - (d) each of the Corporation and the Vendor shall cause Corporation and the Vendor to pay and discharge its liabilities in the Ordinary Course in accordance and consistent with the previous practice of the Corporation, except those contested in good faith by the Corporation, or the Vendor, as the case may be;
  - (e) the Vendor shall in respect of the Corporation, and the Corporation in respect of the Subsidiaries shall use its respective commercially reasonable efforts to take and cause the Corporation to take, all necessary corporate action, steps and proceedings to approve or authorize, validly and effectively, the execution and delivery of this Agreement and the other agreements and documents contemplated hereby and to complete the Transaction and to cause all necessary meetings of directors and shareholders of the Corporation and the Vendor to be held for that purpose;
  - (f) the Vendor and the Corporation shall use its commercially reasonable efforts to satisfy the conditions contained in Section 4.2.
- (2) Rights of Access. During the Interim Period, each of the Vendor and the Corporation shall cause the Corporation to provide:
- (a) during ordinary business hours and upon reasonable notice and subject to compliance with all Applicable Laws and confidentiality agreements, Purchaser and its Representatives, with reasonable access to the Corporation and the Subsidiaries' management, Books and Records, Contracts, Intellectual Property, Insurance Policies, premises, properties and other information relating to the Corporation, the Subsidiaries and the Business; and
  - (b) as the Purchaser may reasonably request, such updated financial and operating data relating to the Corporation as the Corporation provides to the Vendor.
- (3) No Amendment to Articles. The Corporation shall not make any amendment to its articles of incorporation or by-laws, and the Vendor shall not require or authorize the same, except to change the minimum and maximum number of directors permitted by the articles of each of the Corporation and the Subsidiaries to reflect the minimum and maximum numbers set out in the Shareholders' Agreement.

- (4) MOF Notification. Collus shall, in the manner and within the time prescribed by the Electricity Act, notify the MOF of any transfer of “municipal electricity property” within the meaning of the Electricity Act in connection with the Transaction.
- (5) Dividends. Notwithstanding any provision of this Agreement to the contrary, during the Interim Period the Corporation may declare and pay dividends contemplated in Article 2 of this Agreement.

## 6.2 Covenants of the Purchaser

The Purchaser covenants and agrees with the Vendor and the Corporation that Purchaser will do or cause to be done the following:

- (1) Commercially Reasonable Efforts.
  - (a) The Purchaser shall use its commercially reasonable efforts to take all necessary corporate action, steps and proceedings to approve or authorize, validly and effectively, the execution and delivery of this Agreement and the other agreements and documents contemplated hereby and to complete the Transaction and to cause all necessary meetings of directors and shareholders of the Purchaser to be held for that purpose;
  - (b) The Purchaser shall use its commercially reasonable efforts to satisfy the conditions contained in Section 4.1.
- (2) MOF Notification. The Purchaser shall, in the manner and within the time prescribed by the Electricity Act, notify the MOF of any transfer of “municipal electricity property” within the meaning of the Electricity Act in connection with the Transaction.
- (3) Cooperation with OEB MAAD Application. The Purchaser shall prepare and submit to the OEB as soon as practicable following execution of this Agreement, with the cooperation and review of the Vendor, the Corporation and Collus, either
  - (a) an application (the “**MAAD Application**”) requesting approval of the Transaction and any corresponding amendment of the electricity distribution licences held by Collus and the Purchaser. Up to \$100,000 of external costs incurred in respect of the MAAD Application will be borne by the Purchaser after which (if any) they shall be shared equally; or
  - (b) if the MAAD Application is determined by the Parties not to be required, an informational filing or submission to be submitted to the OEB prior to the Closing in respect of the Transaction.

### 6.3 Mutual Covenants

- (1) Co-operation and Compliance. Subject to the terms and conditions of this Agreement and Applicable Law, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective, as soon as reasonably practicable, the Transaction and other transactions contemplated hereby, including using commercially reasonable efforts to ensure satisfaction of the conditions precedent to each Party's obligations under this Agreement.
- (2) Shareholders' Agreement. On Closing, each of the Vendor, the Corporation and the Purchaser shall execute and deliver the Shareholders' Agreement.
- (3) Cooperation with OEB MAAD Application. Each of the Parties shall cooperate with one another in the preparation and submission to the OEB by the Purchaser, as soon as possible following execution of this Agreement, of the MAAD Application or other submission to the OEB as described in Section 6.2(3).
- (4) Confidentiality. The Parties shall treat as confidential this Agreement, the terms and conditions set out herein and all information provided to one another in accordance with this Agreement. All such information shall be kept in the strictest confidence and not divulge to any unrelated third party or used by the Vendor, the Corporation or the Purchaser except for purposes of the Transaction. The Parties acknowledge that Collus and the Purchaser executed the Confidentiality Agreement and that such confidentiality agreement continues in full force and effect for all purposes of this section.
- (5) Public Statements. Unless otherwise provided herein or otherwise agreed to by the Parties, prior to Closing, no Party shall issue or make any public announcement or press release (a "**Public Announcement**") with respect to this Agreement or the Transaction or other transactions contemplated hereby without the prior written consent of the Vendor, the Corporation and the Purchaser which consent shall not be unreasonably withheld or delayed, except as may be required by Applicable Law or a Governmental Authority. If such disclosure is required by Applicable Law or a Governmental Authority, the Party required to make such disclosure shall, if practicable, provide prior notice to the other Parties of such requirement, the nature thereof, and the nature of the proposed disclosure, and shall limit the scope of such disclosure to the extent necessary to comply with such requirement. Upon the execution of this Agreement, the Parties shall issue a mutually acceptable press release.
- (6) Third Party Consents. Each Party shall have the right to review in advance information which appears in any application, notice, petition or filing made seeking Third Party Consents required in connection with the Transaction and other transactions contemplated hereby.
- (7) Future Opportunities. During the Interim Period, each of the Vendor, the Corporation and the Purchaser agree to continue in good faith to negotiate the completion of the

Transaction contemplated by this Agreement and not to directly or indirectly pursue any transaction which would impair the Transaction.

- (8) Service Agreements. During the Interim Period, the Vendor, the Purchaser and the Corporation will agree to amend the Service Agreements in respect of ongoing obligations with respect to the Corporation and the Subsidiaries or will have confirmed the acceptability of the Service Agreements in their current form.

## **ARTICLE 7**

### **INDEMNIFICATION**

#### **7.1 Indemnification**

- (1) Subject to Sections 7.1(3), 7.1(6), 7.1(8) and 7.1(10), the Vendor shall indemnify, defend and hold harmless, the Purchaser, the Corporation and the Subsidiaries and each of their respective officers, directors, employees, shareholders and agents, (each, a “**Purchaser Indemnitee**”) from and against any and all claims, demands, suits, losses, liabilities, damages, obligations, assessments, reassessments, charges, payments, costs and expenses and accrued interest thereon (including the costs and expenses of, and accrued interest in respect of, any and all actions, suits, proceedings, assessments, judgments, settlements and compromises relating thereto and reasonable lawyers’ and other professionals’ and experts’ fees and reasonable disbursements in connection therewith) (each, an “**Indemnifiable Loss**”), asserted against or suffered by any Purchaser Indemnitee relating to, in connection with or resulting from or arising out of any Direct Claim or Third Party Claim in respect of:
- (a) any breach by the Vendor or the Corporation, as applicable, of any representation and warranty made by it in respect of itself under Section 5.1;
  - (b) any breach by the Vendor of any representation and warranty contained in this Agreement, or incorrectness in any certificate furnished by the Vendor or the Corporation in accordance with this Agreement; or
  - (c) any breach by the Vendor or the Corporation of any covenants or agreements contained in this Agreement provided such breach was not caused by the breach by the Purchaser of its covenants or agreements contained in this Agreement;

provided that in the case of (a), (b) or (c) the Claim is brought within the time limits set out in Section 8.3.

- (2) It is the intention of each of the Vendor and the Corporation to constitute the Purchaser as trustee for the Purchaser Indemnitees that are not party to this Agreement of the covenants of the Vendor and the Corporation in this Section 7.1(2) and the Purchaser agrees to accept such trust and to hold and enforce such covenants on behalf of the Purchaser Indemnitees.

- (3) Subject to Sections 7.1(1), 7.1(7), 7.1(8) and 7.1(10), the Purchaser shall indemnify, defend and hold harmless the Vendor, the Corporation and the Subsidiaries and each of their respective officers, directors, employees, shareholders, and agents (each, a “**Collus Indemnitee**”) from and against any and all Indemnifiable Losses asserted against or suffered by any Collus Indemnitee relating to, in connection with, resulting from or arising out of any Direct Claim or Third Party Claim in respect of:
- (a) any breach by the Purchaser of any representations and warranties contained in this Agreement, or incorrectness in any certificate furnished by the Purchaser in accordance with this Agreement; or
  - (b) any breach by the Purchaser of any covenants or agreements contained in this Agreement provided such breach was not caused by the breach by the Vendor or the Corporation or its covenants or obligations contained in this Agreement;

provided that in the case of (a) or (b) the Claim is brought within the time limits set out in Section 8.3.

- (4) It is the intention of the Purchaser to constitute the Vendor and the Corporation as trustees for the Collus Indemnitees that are not party to this Agreement of the covenants of the Purchaser in this Section 7.1(3) and each of the Vendor and the Corporation agrees to accept such trust and to hold and enforce such covenants on behalf of the Collus Indemnitees.
- (5) The expiration or termination of any period of indemnification set out in Sections 7.1(10) and shall not affect the Parties’ obligations under this Article 7 if the Indemnitee provides to the Person required to provide indemnification under this Agreement (the “**Indemnifying Party**”) with proper notice of the claim or event for which indemnification is sought prior to such expiration or termination.
- (6) Each of the Vendor and the Corporation obligations under this Article 7 shall be limited as follows:
- (a) no Purchaser Indemnitee shall be entitled to claim in respect of an Indemnifiable Loss until the time that the aggregate amount of all Indemnifiable Losses of Purchaser Indemnitees exceeds \$100,000.00 and once such threshold is reached the Purchaser Indemnitees shall be entitled to claim for the full amount of Indemnifiable Losses;
  - (b) in no case shall the aggregate obligations of the Vendor and the Corporation to indemnify the Purchaser Indemnitees exceed the Share Purchase Price.
- (7) The Purchaser’s obligations under this Article 7 shall be limited as follows:
- (a) no Collus Indemnitee shall be entitled to claim in respect of an Indemnifiable Loss until the time that the aggregate amount of all Indemnifiable Losses of

Collus Indemnities exceeds \$100,000.00 and once such threshold is reached, the Collus Indemnities shall be entitled to claim for the full amount of Indemnifiable Losses;

- (b) in respect of all Claims, a maximum aggregate amount equal to the Share Purchase Price.
- (8) Notwithstanding anything to the contrary in this Agreement:
- (a) no Party (including a non-Party Indemnitee) shall be entitled to recover hereunder any amount in excess of the actual compensatory damages, court costs and reasonable fees and other expenses of lawyers and other professionals and experts suffered by such Party; and
  - (b) each Party waives any right to recover punitive, special and consequential damages arising in connection with or with respect to this Agreement.

The provisions of this Section 7.1(8) shall not apply to indemnification for a Third Party Claim.

- (9) The Parties agree that, from and after Closing, this Article 7 sets out the sole and exclusive manner by which the Parties may seek compensation or other monetary relief hereunder for any breach of representation, warranty or covenant, and is in lieu of any and all other rights and remedies which any Party may have, for any matter in respect of which it may make a claim on account of an Indemnifiable Loss.
- (10) The representations and warranties in Article 5 shall survive the Closing Date until the date that is twenty-four (24) months thereafter (unless notice of a Claim has been received by either Party prior to the expiry of such twenty-four month period, in which case it will be deemed to survive in accordance with this Article 7), except (a) the representations and warranties contained in Section 5.2(16) (Environmental) shall survive for a period of five (5) years from the Closing Date, and (b) the representations and warranties contained in 5.2(18) (Tax) shall survive the Closing Date and continue until thirty (30) days following the expiration of the applicable statute of limitations or statutory tax assessment period (including all periods of extension, whether automatic or permissive).

## 7.2 Defence of Claim

- (1) If any Indemnitee receives notice of the assertion of any claim or of the commencement of any claim, action or proceeding made or brought by any Person who is not an Indemnitee (a "Third Party Claim") with respect to which indemnification is to be sought from an Indemnifying Party, the Indemnitee shall give such Indemnifying Party reasonably prompt written notice thereof, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee's receipt of notice of such Third Party Claim. Such notice shall describe the nature of the Third Party Claim in reasonable



detail and shall indicate the amount or, if the amount is not then determinable, an appropriate and reasonable estimate of the potential amount of the Indemnifiable Loss that has been or may be sustained by the Indemnitee. The Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume the defence of any Third Party Claim at such Indemnifying Party's expense and by such Indemnifying Party's own counsel, provided, however, that:

- (a) counsel for the Indemnifying Party shall conduct the defence of such Third Party Claim in a manner reasonably satisfactory to the Indemnitee;
- (b) if the defendants to the Third Party Claim include both the Indemnifying Party and the Indemnitee and the Indemnitee shall have reasonably concluded that there may be legal defences available to it which are different from, additional to or inconsistent with those available to the Indemnifying Party, the Indemnitee shall have the right to select separate counsel to participate in the defence of the Third Party Claim and the reasonable fees and disbursements of such counsel shall be considered Indemnifiable Losses for the purpose of this Agreement.

Notwithstanding the provisions of this Section 7.2(1), where a Third Party Claim relates to Taxes, the Indemnifying Party will have the right to participate in or, by giving written notice to the Indemnitee, to elect to assume jointly with the Indemnitee the defence of such a Third Party Claim relating to Taxes and both the Indemnifying Party and the Indemnitee shall act reasonably in connection with the conduct and management of such defence. The provisions of this Section 7.2(1) shall otherwise apply *mutatis mutandis*.

- (2) If the Indemnifying Party assumes the defence in accordance with this Section 7.2(2) the Indemnitee shall co-operate in good faith in such defence at such Indemnitee's own expense. If an Indemnifying Party elects not to assume control of the defence of any Third Party Claim, the Indemnitee shall be entitled to assume such control and may compromise or settle such Third Party Claim (in any manner that it determines appropriate, acting reasonably), over the objection of the Indemnifying Party, which settlement or compromise shall conclusively establish the Indemnifying Party's liability pursuant to this Agreement and the Indemnifying Party shall be bound by the results obtained by the Indemnitee with respect to such Third Party Claim.
- (3) If, within twenty (20) calendar days after an Indemnitee provides written notice to the Indemnifying Party of any Third Party Claims, the Indemnitee receives written notice from the Indemnifying Party that such Indemnifying Party has elected to assume the defence of such Third Party Claim as provided in Section 7.2(1), the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnitee in connection with the defence thereof except as expressly provided in Section 7.2(1), provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Third Party Claim within twenty (20) calendar days after receiving notice from the Indemnitee that the Indemnitee believes the Indemnifying Party has failed to take such steps, the Indemnitee may assume its own defence and the Indemnifying Party shall be liable for all reasonable expenses thereof.

- (4) Without the prior written consent of the Indemnatee, the Indemnifying Party shall not enter into any settlement of any Third Party Claim which would lead to liability or create any financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification under this Agreement. The Indemnifying Party shall not settle any Third Party Claim or conduct any legal or administrative proceeding in a manner which would, in the opinion of the Indemnatee, acting reasonably, have a material adverse impact on the Indemnatee. If a final offer is made to settle a Third Party Claim and the offer creates no liability or financial or other obligation on the part of the Indemnatee for which the Indemnatee is not entitled to indemnification under this Agreement and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to the Indemnatee to that effect. If the Indemnatee fails to consent to such final offer within twenty (20) calendar days after its receipt of such notice, the Indemnifying Party shall be relieved of its obligations to defend such Third Party Claim and the Indemnatee may contest or defend such Third Party Claim. In such event, the maximum liability of the Indemnifying Party as to such Third Party Claim will be the amount of such settlement offer plus reasonable costs and expenses paid or incurred by the Indemnatee up to the date of such notice.
- (5) If any Third Party Claim is of a nature such that the Indemnatee is required by Applicable Law to make a payment to any Person (a "**Third Party**") for the purposes of this Section 7.2(5) with respect to such Third Party Claim before the completion of settlement negotiations or related legal proceedings, the Indemnatee may make such payment and the Indemnifying Party shall, forthwith after demand by the Indemnatee, reimburse the Indemnatee for any such payment. If the amount of any liability under the Third Party Claim in respect of which such a payment was made, as finally determined, is less than the amount which was paid by the Indemnifying Party to the Indemnatee, the Indemnatee shall, forthwith after receipt of the difference from the Third Party, pay such difference to the Indemnifying Party.
- (6) Except in the circumstances contemplated by Section 7.2(2) or as expressly provided in Section 7.2(5), and whether or not the Indemnifying Party assumes control of the negotiation, settlement or defence of any Third Party Claim, the Indemnatee shall not negotiate, settle, compromise or pay any Third Party Claim except with the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld).
- (7) The Indemnatee shall not permit any right of appeal in respect of any Third Party Claim to terminate without giving the Indemnifying Party notice thereof and an opportunity to contest such Third Party Claim.
- (8) The Parties shall co-operate fully with each other with respect to Third Party Claims, shall keep each other fully advised with respect thereto (including supplying copies of all relevant documentation promptly as it becomes available) and shall each designate a senior officer who will keep himself informed about and be prepared to discuss the Third Party Claim with his counterparts and with counsel at all reasonable times.

- (9) Any claim by an Indemnitee on account of an Indemnifiable Loss which does not result from a Third Party Claim (a “**Direct Claim**”) shall be asserted by giving the Indemnifying Party reasonably prompt written notice thereof, stating the nature and factual basis of the Claim in reasonable detail and indicating the amount, or if the amount is not then determinable, an approximate and reasonable estimate of the potential amount of the Direct Claim, but in any event such notice shall not be given later than twenty (20) calendar days after the Indemnitee becomes aware of such Direct Claim, and the Indemnifying Party shall have a period of twenty (20) calendar days within which to investigate and respond to such Direct Claim. For the purpose of such investigation, the Indemnitee shall make available to the Indemnifying Party the information relied upon by the Indemnitee to substantiate the Direct Claim. If the Indemnitee and the Indemnifying Party agree, at or prior to the expiration of such twenty (20) calendar day period, to the validity and amount of the Direct Claim, the Indemnifying Party shall immediately pay to the Indemnitee the full agreed upon amount of the Direct Claim. If the Indemnifying Party does not respond within such twenty (20) calendar day period, the Indemnifying Party shall be deemed to have accepted the Direct Claim. If the Indemnifying Party rejects such Direct Claim, the Indemnitee will be free to seek enforcement of its right to indemnification under this Agreement and shall be entitled to submit the Dispute to the Dispute arbitration procedure referred to in Section 8.2.
- (10) If the amount of any Indemnifiable Loss, at any time subsequent to the making of an indemnity payment in respect thereof, is reduced by recovery, settlement or otherwise under or pursuant to any insurance coverage, or pursuant to any claim, recovery, settlement or payment by, from or against any other entity (including, without limitation, relating to any increase in distribution rates specifically to allow such recovery or from a reduction in taxes), the amount of such reduction, together with any interest earned on such amount, if applicable, less any deductibles, costs or expenses incurred in connection therewith, shall promptly be repaid by the Indemnitee to the Indemnifying Party.
- (11) A failure to give timely notice as provided in this Section 7.2 shall not affect the rights or obligations of any Party under this Agreement except if, and only to the extent that, as a result of such failure, the party which was entitled to receive such notice was actually prejudiced.

## **ARTICLE 8**

### **GENERAL PROVISIONS**

#### **8.1 Notices**

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

apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section 8.1. Notices and other communications shall be addressed as follows:

- (a) in the case of the Corporation and the Subsidiaries:

P.O. Box 189  
43 Stewart Road  
Collingwood, ON L9Y 3Z5

Attention: Ed Houghton  
Fax No.: (705) 445-2549

- (b) in the case of the Vendor:

P.O. Box 189  
43 Stewart Road  
Collingwood, ON L9Y 3Z5

Attention: Clerk  
Fax No.: (705) 445-2448

- (c) in the case of the Purchaser:

PowerStream Inc.  
161 Cityview Boulevard  
Vaughan, ON L4H 0A9

Attention: Dennis Nolan, Executive Vice-President, Corporate Services and  
Secretary  
Fax No.: (905) 532-4616

Notwithstanding the foregoing, any notice or other communication required or permitted to be given by any party pursuant to or in connection with any arbitration procedures contained in this Agreement or in any Schedule to this Agreement may only be delivered by hand. The failure to send or deliver a copy of a notice to counsel shall not invalidate any notice given under this Section 8.1.

## 8.2 Arbitration Procedures

- (a) **Disputes:** Each Party shall appoint one or more representatives who shall be responsible for administering this Agreement on its behalf and for representing its respective interests in disputes relating to this Agreement (“Disputes”). Any Dispute between the Parties relating to this Agreement that is not resolved between such representatives within ten (10) Business Days of the date that one Party notifies the other Party or Parties of such dispute shall be referred by the Parties’ representatives in writing to the senior

management of each Party for resolution. Such senior management shall use good faith efforts to resolve the Dispute for a period of up to ten (10) Business Days.

- (b) **Arbitration:** Any Dispute that is not resolved by the procedure set forth in Section 8.2(a) above may be referred to and resolved by arbitration by a single arbitrator in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), subject to the following modifications and additions:
- (i) The arbitration shall take place in Toronto, Ontario, and shall be conducted in English;
  - (ii) The arbitration shall be conducted by a single arbitrator having no financial, business or personal interest in the outcome of the arbitration. The arbitrator shall be appointed jointly by agreement of the Parties. In the event the Parties are unable to agree on the appointment of the arbitrator within ten (10) days after notice of a demand for arbitration is given by a Party, then the arbitrator shall be selected pursuant to the provisions of the *Arbitration Act, 1991* (Ontario);
  - (iii) The arbitrator shall have the authority to award any remedy or relief that a court could order or grant in accordance with this Agreement including, without limitation, specific performance of any obligation, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process; and
  - (iv) The arbitral award shall be in writing, stating the reasons for the award and be final and binding on the Parties with no rights of appeal.
- (c) The provisions of this Section 8.2 do not apply to the dispute resolution mechanisms already provided for in Section 2.1(7) in respect of the Working Capital Adjustment.

### 8.3 Survival of Representations and Warranties, Covenants and Obligations

Subject to the *Limitations Act, 2002* (Ontario):

- (a) the representations and warranties given or made by any Party in this Agreement or in any certificate or other writing furnished in connection with this Agreement shall survive the Closing for a period of twenty-four (24) months after the Closing Date and shall thereafter terminate and be of no further force or effect, except that (i) any Claim based on fraud or fraudulent misrepresentation, may be brought at any time; and (ii) any representation and warranty as to which a Claim (including a contingent Claim) shall have been asserted during the survival period shall continue in effect with respect to such Claim until such Claim shall have been finally resolved or settled. Each Party shall be entitled to rely upon the representations and warranties of the other Parties set forth in this Agreement, notwithstanding any investigation or audit conducted before or after the Closing Date or the decision of any party to complete the Closing;

- (b) the covenants and obligations of the Parties set forth in this Agreement, including the indemnification obligations of the Vendor, the Corporation and the Purchaser under Article 7, shall survive the Closing indefinitely, unless such covenants and obligations by their terms expire on or before the Closing, and each Party shall be entitled to the full performance thereof by the other Parties without limitation as to time or amount (except as otherwise specifically set forth in this Agreement); and
- (c) subject to Sections 8.3(a) and (b), all of the provisions upon which a claim is made under this Agreement shall survive until such claim has been disposed of in accordance with this Agreement.

#### **8.4 No Personal Liability Re: Certificates**

All certificates delivered by a corporate officer or director of the Vendor, the Corporation or the Purchaser, in accordance with this Agreement, shall be delivered in such official capacity without personal liability to any such individual.

#### **8.5 Entire Agreement**

This Agreement, the agreements, declarations and instruments contemplated hereby and the Confidentiality Agreement constitute the entire agreement between the Parties pertaining to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the Parties, written or oral, in respect thereof.

#### **8.6 Further Assurances**

Each Party hereby covenants and agrees that at any time and from time to time after the Closing Date it will, upon the request of the other Parties, or any one of them, do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, assignments, transfers, conveyances and assurances as may be required for the better carrying out and performance of all the terms of this Agreement.

#### **8.7 Remedies Cumulative**

The rights and remedies of the parties under this Agreement are cumulative and in addition to and not in substitution for any rights or remedies provided by law. Any single or partial exercise by any Party hereto of any right or remedy for default or breach of any term, covenant or condition of this Agreement does not waive, alter, affect or prejudice any other right or remedy to which such Party may be lawfully entitled for the same default or breach.

#### **8.8 Waiver, Amendment**

No modification of or amendment to this Agreement shall be valid or binding unless set forth in writing and duly executed by each of the Parties. No waiver of any provision of this Agreement shall be effective or binding unless made in writing and signed by the Party

purporting to give the same and, unless otherwise provided, no such waiver shall constitute a waiver of any other provision of this Agreement nor constitute a continuing waiver, or operate as a waiver of, or estoppel with respect to, any subsequent failure to comply.

#### **8.9 Counterparts**

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same agreement.

#### **8.10 Governing Law**

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

#### **8.11 Commercially Reasonable Efforts**

The Parties acknowledge and agree that, for all purposes of this Agreement, an obligation on the part of any party to use commercially reasonable efforts to obtain any waiver, consent, approval, permit, licence or other document shall not require such party to make any payment to any person for the purpose of procuring the same, other than payments for amounts otherwise due and payable to such person, payments for incidental expenses incurred by such person and payments required by any applicable law or regulation.

#### **8.12 Time of Essence**

Time shall be of the essence hereof.

#### **8.13 Severability**

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

#### **8.14 No Partnership**

Nothing contained in this Agreement nor any acts of the Parties hereunder shall be deemed to constitute any Party as a partner of any other Party.

**8.15 Assignment**

The rights of the Parties hereunder shall not be assignable.

**8.16 Successors and Assigns**

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

**8.17 Expenses of the Parties**

Except as set out in Section 6.2(3) and as otherwise set out in this Agreement, all costs and expenses (including the fees and disbursements of accountants, legal counsel and other professional advisors) incurred in connection with this Agreement and completion of the transactions contemplated by this Agreement should be paid by the party incurring those costs and expenses, except that the Vendor shall be responsible for all costs and expenses incurred by it, the Corporation and the Subsidiaries prior to the Closing Time as a direct result of the Transaction, unless otherwise agreed to by the Parties. If this Agreement is terminated, the obligation of each Party to pay its own costs and expenses is subject to each Party's respective rights arising from a breach or termination.

**8.18 Covenant of the Vendor, the Corporation and the Purchaser**

Each of the Vendor, the Corporation and the Purchaser is entering into this Agreement to confirm its undertaking and agreement to be bound by all of the provisions of this Agreement and that it will act to give effect to the terms and conditions of this Agreement.

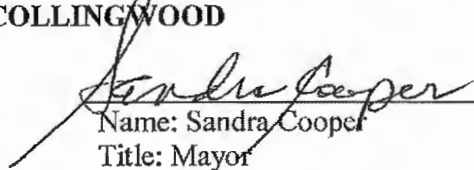
**[EXECUTION PAGE FOLLOWS]**

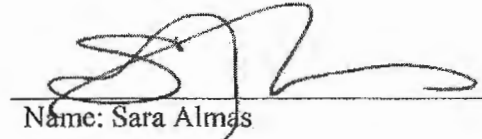


*Share Purchase Agreement*

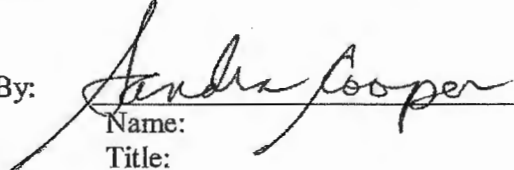
IN WITNESS WHEREOF the parties hereto have duly authorized and executed this Agreement as of the day and year first above written.

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

  
Name: Sandra Cooper  
Title: Mayor

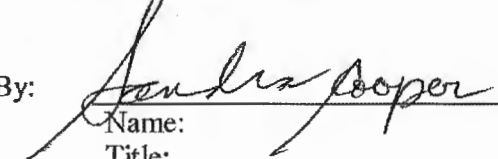
  
Name: Sara Almas  
Title: Clerk

**COLLINGWOOD UTILITY SERVICES CORP.**

By:   
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**COLLUS POWER CORP.**

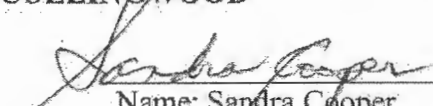
By:   
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**Share Purchase Agreement**

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

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

  
Name: Sandra Cooper  
Title: Mayor

\_\_\_\_\_  
Name: Sara Almas  
Title: Clerk

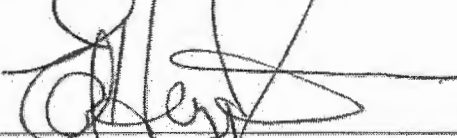
**COLLINGWOOD UTILITY SERVICES CORP.**

By: \_\_\_\_\_  
Name: Dean Muncaster  
Title: Chair

  
By: \_\_\_\_\_  
Name: Ed Houghton  
Title: President & CEO

**COLLUS POWER CORP.**

By: \_\_\_\_\_  
Name: Dean Muncaster  
Title: Chair

  
By: \_\_\_\_\_  
Name: Ed Houghton  
Title: President & CEO

Share Purchase Agreement

COLLUS SOLUTIONS CORP.

By: [Signature]  
Name: Joan Pajunen  
Title: Chair

By: [Signature]  
Name: Ed Houghton  
Title: President & CEO

COLLUS ENERGY CORP.

By: [Signature]  
Name: Doug Garbutt  
Title: Chair

By: [Signature]  
Name: Ed Houghton  
Title: President & CEO

POWERSTREAM INC.

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

*Share Purchase Agreement*


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

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

\_\_\_\_\_  
Name: Sandra Cooper  
Title: Mayor


\_\_\_\_\_  
Name: Sara Almas  
Title: Clerk

**COLLINGWOOD UTILITY SERVICES CORP.**

By:   
\_\_\_\_\_  
Name: Dean Muncaster  
Title: Chair

By: \_\_\_\_\_  
Name: Ed Houghton  
Title: President & CEO

**COLLUS POWER CORP.**

By:   
\_\_\_\_\_  
Name: Dean Muncaster  
Title: Chair

By: \_\_\_\_\_  
Name: Ed Houghton  
Title: President & CEO

**COLLUS SOLUTIONS CORP.**

By: \_\_\_\_\_  
Name:  
Title:

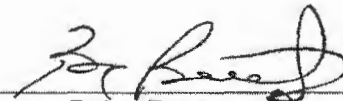
By: \_\_\_\_\_  
Name:  
Title:


**COLLUS ENERGY CORP.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**POWERSTREAM INC.**

By:  \_\_\_\_\_  
Name: Brian Bentz  
Title: President & CEO

By:  \_\_\_\_\_  
Name: Dennis Nolan  
Title: EVP Corporate Services & Secretary

**Schedule A**  
**Promissory Note**

See attached.

**PROMISSORY NOTE**

DATE: October 31, 2000

INTEREST: 5%

AMOUNT: \$1,710,169

DUE: On demand

## FOR VALUE RECEIVED

The undersigned Corporation does hereby promise to pay on demand to:

## THE CORPORATION OF THE TOWN OF COLLINGWOOD

the sum of One Million, Seven Hundred and Ten Thousand, One Hundred and Sixty-Nine Dollars (\$1,710,169) together with interest at the rate of Five Percent (5 %) per annum accruing from the date of this Promissory Note until paid in full.

Interest shall be paid quarterly on the principal balance owing from time to time, on the last day of January, May, August and October in each and every year, commencing the last day of January, 2001.

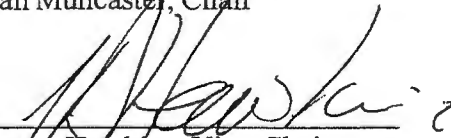
Provided that the principal sum, together with interest thereon, may be prepaid in full or part at any time or times without notice or bonus.

DATED at Collingwood, this 31<sup>st</sup> day of October, 2000

COLLUS POWER CORP.

per:

 c/s  
 \_\_\_\_\_  
 Dean Muncaster, Chair

  
 \_\_\_\_\_  
 Duncan Hawkins, Vice-Chair

**Schedule B**

**Shareholders' Agreement**

See attached.



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**UNANIMOUS SHAREHOLDERS AGREEMENT**

---

**Dated as of the \_\_\_\_ day of \_\_\_\_\_, 2012**

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

**- and -**

**POWERSTREAM INC.**

**- and -**

**COLLINGWOOD UTILITY SERVICES CORP.**

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**AIRD & BERLIS LLP**  
Barristers and Solicitors

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## UNANIMOUS SHAREHOLDERS AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

**BETWEEN:**

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**, a corporation duly incorporated under the *Municipal Act* (Ontario) (hereinafter referred to as "**Collingwood**")

- and -

**POWERSTREAM INC.**, a corporation duly incorporated under the *Business Corporations Act* (Ontario) (hereinafter referred to as "**PowerStream**")

- and -

**COLLINGWOOD UTILITY SERVICES CORP.**, a corporation duly incorporated under the *Business Corporations Act* (Ontario) (hereinafter referred to as the "**Corporation**")

**RECITALS:**

- (a) The Corporation is the owner of all of the issued and outstanding shares in Collus PowerStream Power Corp. ("**Collus**"), Collus PowerStream Solutions Corp. ("**Solutions**") and Collus PowerStream Energy Corp. ("**Energy**");
- (b) On the 25<sup>th</sup> day of October, 2000, Collingwood issued a shareholder declaration with respect to the shares it held in the Corporation (the "**Shareholder Declaration**"), which Shareholder Declaration was terminated on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_;
- (c) On or about the date hereof, PowerStream purchased 2,550,820 common shares in the capital of the Corporation pursuant to a share purchase agreement, dated the \_\_\_\_ day of \_\_\_\_\_, 2012, between Collingwood, the Corporation and PowerStream (the "**Share Purchase Agreement**");
- (d) As of the date hereof, Collingwood and PowerStream are the only Shareholders of the Corporation;
- (e) The authorized capital of the Corporation consists of unlimited common shares, of which 5,101,640 common shares are issued and outstanding;

- (f) At the date hereof all of the issued and outstanding shares of the Corporation are registered and beneficially owned as follows:

<u>Shareholder</u>	<u>Shares</u>
Collingwood	2,550,820 common shares
PowerStream	2,550,820 common shares

- (g) The issued and outstanding shares of Collus, Solutions and Energy are registered and beneficially owned as follows:

<u>Entity</u>	<u>Shareholder</u>	<u>Shares</u>
Collus	the Corporation	5,101,340 common shares
Solutions	the Corporation	100 common shares
Energy	the Corporation	100 common shares

- (h) The operation and management of the Corporation and its Subsidiaries shall be based upon the general objectives and business principles set out in Section 2.1 of this Agreement; and
- (i) It is the intent and understanding of each of the Corporation, Collingwood and PowerStream to transition the corporate governance structure of the Corporation and its Subsidiaries as set out herein.

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

### ARTICLE 1 INTERPRETATION

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

“**Adjourned Meeting**” has the meaning set forth in Section 4.9.

“**Affiliate**” means any Person that: (i) Controls a Party; (ii) is Controlled by a Party; or (iii) is Controlled by the same Person that Controls a Party.

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

“**Applicable Law**” means, collectively, all applicable federal, provincial and municipal laws, statutes, ordinances, decrees, rules, regulations, by-laws, legally enforceable policies, codes, or guidelines, judicial, arbitral, administrative, ministerial, departmental or regulatory judgments, orders, decisions, directives,

rulings or awards, and conditions of any grant of approval, permission, certification, consent, registration, authority or licence by any statutory body, self-regulatory authority or other Governmental Authority.

“**Arm’s Length**” means the same as the term “arm’s length” as used in the *Income Tax Act* (Canada), as amended from time to time.

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

“**Board**” means the board of directors of the Corporation, or of a Subsidiary.

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

“**Business Plan**” has the meaning forth in Section 5.2(a).

“**Buy/Sell Notice**” has the meaning set forth in Section 9.1.

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

“**Collingwood**” has the meaning set forth in the recitals hereto.

“**Collus**” has the meaning set forth in the recitals hereto.

“**Control**” means, with respect to any Person at any time, (i) holding, as owner or other beneficiary, other than solely as the beneficiary of an unrealized security interest, directly or indirectly, securities or ownership interests of that Person carrying votes or ownership interests sufficient to elect or appoint the majority of individuals who are responsible for the supervision or management of that Person, or (ii) the exercise of de facto control of that Person whether direct or indirect and whether through the ownership of securities or ownership interests, by contract or trust or otherwise and “**Controlled by**”, “**Controlling**” and similar words have corresponding meanings.

“**Controlling Shareholder**” means a Person who Controls a Shareholder if that Shareholder is a company or corporation. If a Controlling Shareholder of a Shareholder is itself a company or corporation, “**Controlling Shareholder**” shall mean the Person(s) who ultimately Control such Shareholder.

“**Corporation**” has the meaning set forth in the recitals hereto.

“**Date of Closing**” has the meaning set forth in Section 9.3.

“**Dividend Policy**” has the meaning set forth in Section 5.2(c).

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

“**Energy**” has the meaning set forth in the recitals hereto.

“**Enforcing Shareholder**” has the meaning set forth in Section 9.3.

“**Fair Market Value**” has the meaning set forth in Section 8.4.

“**Former Director**” has the meaning set forth in Section 4.10.

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

“**HoldCo**” has the meaning set forth in Section 14.10(a).

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

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

“**Information**” has the meaning set forth in Section 11.1.

“**New Date of Closing**” has the meaning set forth in Section 9.3.

“**New Purchase Price**” has the meaning set forth in Section 9.3.

“**Non-Selling Shareholder**” has the meaning set forth in Section 10.5(b).

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

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

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

“**Offered Shares**” has the meaning set forth in Section 7.1 and 9.3, as applicable.

“**Offeree**” has the meaning set forth in Section 9.1.

“**Offeror**” has the meaning set forth in Section 9.1.

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



**“Ordinary Course of Business”** means, for the Corporation or any Subsidiary, the conduct of the business of the Corporation or the applicable Subsidiary in the ordinary and usual course and in a manner consistent with the manner in which the business is carried on as of the date hereof, if applicable, or as may be permitted pursuant to Section 2.3 hereof as to the nature and scope of the business.

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

**“Permitted Transferee”** has the meaning set forth in Section 6.3(a).

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

**“PowerStream”** has the meaning set forth in the recitals hereto.

**“Pro Rata”** means in the same proportion that the number of Shares owned by a Shareholder is to all of the then issued and outstanding Shares of all classes of the Corporation.

**“Prospective Purchaser”** has the meaning set forth in Section 7.3.

**“Purchase Notice”** has the meaning set forth in Section 7.2.

**“Purchase Price”** has the meaning set forth in Section 7.1(a).

**“Purchaser”** has the meaning set forth in Schedule A hereto.

**“Refusing Shareholder”** has the meaning set forth in Section 9.3.

**“Right of First Refusal Period”** has the meaning set forth in Section 7.2.

**“Remaining Shareholders”** has the meaning set forth term in Section 7.1(b).

**“Sale Notice”** has the meaning set forth in Section 7.1(a).

**“Second Adjourned Meeting”** has the meaning set forth in Section 4.9.

**“Selling Shareholder”** has the meaning set forth in Section 7.1(a).

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

**“Shareholder Declaration”** has the meaning set forth in the recitals hereto.

“**Share Purchase Agreement**” has the meaning set forth in the recitals hereto.

“**Shares**” means any authorized class of shares, voting or non-voting, of the Corporation.

“**Share Purchase Price**” has the meaning set forth in Section 8.3(a).

“**Solutions**” has the meaning set forth in the recitals hereto.

“**Standstill Period**” means the period that is thirty (30) months from the date hereof.

“**Strategic Plan**” has the meaning set forth in Section 2.2(d).

“**Subsidiaries**” means the subsidiary corporations (as defined in the OBCA) of the Corporation and “**Subsidiary**” means any one of such Subsidiaries and includes Collus, Solutions and Energy as at the date hereof.

“**Subsidiary Board**” means the board of directors of each Subsidiary of the Corporation, as elected by the Corporation as sole shareholder, comprised of nominees determined from time to time in accordance with the provisions of this Agreement.

“**Third Adjourned Meeting**” has the meaning set forth in Section 4.9.

“**Time of Closing**” means 10:00 am Toronto time.

“**Transfer Tax**” means the tax payable pursuant to Section 94 of the *Electricity Act, 1998* (Ontario) or any similar tax or replacement or substitution thereof.

“**Valuator**” has the meaning set forth in Schedule A hereto.

“**Vendor**” has the meaning set forth in Schedule A hereto.

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

“**Withdrawal Date**” has the meaning set forth in Section 8.4.

“**Withdrawing Shareholder**” has the meaning set forth in Section 8.2.

**1.2 Interpretation Not Affected by Headings.** The division of this Agreement into articles, sections, subsections, paragraphs, subparagraphs and clauses and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of this Agreement. The terms “this Agreement”, “hereof”, “herein”, “hereunder” and similar expressions refer to this Agreement and not to any particular article, section, subsection, paragraph, subparagraph or clause or other portion hereof and include any agreement or instrument supplemental or ancillary hereto. Unless something

in the subject matter or context is inconsistent therewith, references herein to articles and sections are to articles and sections of this Agreement.

- 1.3 Number and Gender.** Words importing the singular number only shall include the plural and vice versa, words importing the masculine gender shall include the feminine and neuter genders and vice versa.
- 1.4 Accounting Principles.** Wherever in this Agreement reference is made to generally accepted accounting principles, such reference shall be deemed to be the generally accepted accounting principles from time to time approved by the Canadian Institute of Chartered Accountants, or any successor institute, applicable as at the date on which such calculation is made or required to be made in accordance with generally accepted accounting principles. For greater clarity, the International Financial Reporting Standards shall apply for the periods on and after December 31, 2012.
- 1.5 Effect of this Agreement.** To the extent that this Agreement specifies that any matters relating to the Corporation or its Subsidiaries may only be or shall be dealt with or approved by, or shall require action by the Shareholders, the discretion and powers of the directors of the Corporation or a Subsidiary to manage and to supervise the management of the business and affairs of the Corporation or a Subsidiary with respect to such matters are correspondingly restricted. For greater certainty, the Parties agree that Sections 5.1 of this Agreement are intended to operate as a unanimous shareholders agreement with respect to the Corporation and its Subsidiaries, within the provisions of Section 108(2) of the OBCA.
- 1.6 Statutes and Amendments.** Any reference in this Agreement to an agreement, or to a statute, regulation or rule promulgated under a statute or to any provision of an agreement, a statute, regulation or rule shall be a reference to the agreement, statute, regulation, rule or provision, as amended, restated, re-enacted or replaced from time to time.
- 1.7 Schedules.** The following schedule is incorporated herein and forms part of this Agreement:

Schedule A	Valuation Method
Schedule B	Corporation and Subsidiaries Dividend Policy
Schedule C	Charter Documents of Corporation and each Subsidiary

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

- 2.1 Guiding Principles and Objectives.** The Parties acknowledge and recognize the following guiding principles and objectives of the Corporation and its Subsidiaries and the intention of the Shareholders that the Corporation and its Subsidiaries be managed on an ongoing basis in a manner consistent with these guiding principles and objectives:
- (a) enhance Shareholder and investor value;

- (b) strengthened voice with the public, regulator and governments;
- (c) enhanced community leadership in energy conservation and environment protection;
- (d) continued high level of safety;
- (e) the Corporation and the Subsidiaries shall each be governed by a board of directors with proportional representation of the Shareholders;
- (f) policies shall be established to maintain and sustain infrastructure through adequate investments consistent with good utility practice;
- (g) service reliability levels in all service areas are to be maintained at or better than the levels which were maintained prior to the date hereof, subject in all cases to good utility practice and the requirements and/or approval of the OEB;
- (h) cost savings shall be obtained through suitable economies of scale;
- (i) customer service levels are to be maintained or improved as allowed by electricity distribution rates consistent with good utility practice and sound commercial principles;
- (j) utilize suitable human resource programs to avoid, if possible, lay offs including deployment, re-training, early retirement, separation incentives and attrition;
- (k) treat all employees in a fair and equitable manner, and develop with its employees a shared commitment towards high customer service, improved productivity and workplace safety, as well as ensuring that all staff understand the Business Plan and direction, and they have the skill required to fulfill their part in achieving those goals;
- (l) mutually seek to grow the Corporation's business both organically and through acquisition or merger;
- (m) provide a continued and substantial presence in the communities that the Corporation services;
- (n) provide continued and enhanced support for the interests of the communities that the Corporation serves;
- (o) with due consideration to the optimization of the rate of return and Shareholder value, be an integral participant and play a significant role in the local communities in which they operate. The Corporation and Subsidiaries will strive to be good corporate citizens and the facilitator of economic development throughout the service area, and not facilitate economic development in any way that would favour one community over another, nor discriminate against any community within the applicable service area; and

- (p) whenever possible and practicable, best utility practices of the industry are to be adopted.

**2.2 Financial Policies, Risk Management and Strategic Plan.** The Board and any Subsidiary Board shall establish policies to:

- (a) Capital Structure – develop and maintain a prudent financial and capitalization structure consistent with industry norms, OEB requirements applicable to licensed electricity distributors and sound financial principles;
- (b) Returns – have the objective of optimizing its rate of return and Shareholder value. Subject to OEB approval, the maximum rate of return sought by Collus from time to time will be achieved as soon as practical;
- (c) Risk Management – manage all risks related to the business conducted by Collus through the adoption of appropriate risk management strategies and internal controls consistent with industry norms; and
- (d) Strategic Plan – within six (6) months and not less than every three (3) years thereafter, update and revise the current strategic plan of the Corporation (the “**Strategic Plan**”) to reflect business opportunities available, consistent with the *Ontario Energy Board Act* and all other regulatory requirements which builds upon its excellence in electricity distribution.

**2.3 Permitted Business Activities.** The Corporation and its Subsidiaries may engage in any business activities which are permitted by Applicable Law, including the Electricity Act and OEB Act, applicable to the Corporation and its Subsidiaries from time to time. In so doing, the Corporation and its Subsidiaries shall conform to all requirements of all applicable Governmental Authorities, including the OEB, the IESO and the OPA.

**ARTICLE 3**  
**IMPLEMENTATION OF THIS AGREEMENT**

**3.1 Carrying out of the Agreement.**

- (a) The Shareholders shall at all times act and vote their Shares to carry out and cause the Corporation to carry out the provisions of this Agreement.
- (b) The Corporation confirms its knowledge of this Agreement and will carry out and be bound by the provisions of this Agreement to the full extent that it has the capacity and power at law to do so.

**3.2 Endorsement on Share Certificates.** Share certificates of the Corporation and its Subsidiaries shall bear the following language either as an endorsement or on the face thereof:

“The shares represented by this certificate are subject to all the terms and conditions of an agreement made as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, a copy of which is on file at the registered office of the Corporation.”

**ARTICLE 4**  
**DIRECTORS OF THE CORPORATION AND SUBSIDIARIES**

**4.1 Number and Identity of Directors.**

- (a) Each Shareholder shall be entitled to nominate and elect that number of directors to the Board and any Subsidiary Board (rounding up or down to the nearest whole number) which is in the same proportion to the total number of directors of the Corporation as the number of Shares owned by that Shareholder is to the total number of Shares issued and outstanding from time to time.
- (b) The Articles of the Corporation and each Subsidiary shall provide for the Board and each Subsidiary Board to consist of a minimum of 1 director and a maximum of 10 directors.
- (c) The Board and each Subsidiary Board as at the date of this Agreement shall consist of 6 directors. In accordance with Section 4.1(a), Collingwood shall be entitled to nominate 3 directors and PowerStream shall be entitled to nominate 3 directors. The majority of the Directors nominated by each Shareholder shall be independent from such Shareholder. Directors shall hold office until such time as their successors are elected by the Shareholders.

**4.2 Election of Directors.** The Shareholders shall elect the members of the Corporation and any Subsidiary Board. The Shareholders shall at all times act and vote their Shares to elect as directors of the Corporation or a Subsidiary the individuals nominated as directors, and, if required by a Shareholder, as contemplated in Section 4.6, to remove such director(s).

**4.3 Qualification of Directors.** The Board and any Subsidiary Board should reflect a cross-section of skills and experience. In addition to sound judgment and personal integrity, the qualifications of candidates for the Board and any Subsidiary Board may include:

- (a) industry knowledge concerning electricity distribution specifically and regulated industries generally;
- (b) business experience with businesses comparable to the Corporation or the Subsidiary, as applicable;
- (c) financial, legal, accounting and/or marketing experience;
- (d) experience on boards of public companies or major corporations;
- (e) awareness of public policy issues related to the Corporation or the Subsidiary, as applicable, and the electricity distribution business generally; and

- (f) knowledge and experience with corporate governance principles and/or risk management strategies.

#### 4.4 **Chair.**

- (a) For two years from the date hereof, the Board shall have two co-Chairs, one nominated by each of the current Shareholders from among the directors. The co-Chairs shall preside at each meeting of the Board. In the absence of the co-Chairs, the chair of the meeting shall be selected by the directors in attendance at such meeting.
- (b) After the period contemplated by paragraph (a), and each year thereafter, the Board will have a Chair and a Vice-Chair, each representing one of the Shareholders and appointed by such Shareholder from the directors, with the right to appoint the Chair and Vice-Chair alternating between the Shareholders every second year.

#### 4.5 **Term of Directors.**

- (a) Directors of a Board shall each be appointed for a term of three (3) years as provided in the by-laws of Corporation or the applicable Subsidiary.
- (b) A director may be appointed for successive terms at the discretion of the Shareholder appointing such director.

4.6 **Removal of Directors.** Subject to the provisions of the OBCA, each Shareholder shall be entitled in its discretion to cause any of the directors nominated by it to any Board to be removed and to nominate and have an individual elected a successor or successors, as required, by providing a direction in writing to the Corporation or the applicable Subsidiary and to the other Shareholders who shall elect such replacement director or directors. Upon the resignation or removal of a director from a Board, the Shareholder that nominated such director shall use reasonable efforts to obtain and deliver to the Corporation or the applicable Subsidiary a resignation and a release from such director in a form satisfactory to the Corporation or the applicable Subsidiary.

4.7 **Voting.** All matters to be determined by a Board shall be determined by a majority vote of directors at a duly convened meeting of that Board and, in case of an equality of votes, the chairperson of the meeting shall not be entitled to a second or casting vote.

#### 4.8 **Meeting of Directors.**

- (a) The Board shall meet at least once each financial quarter at a time and place to be determined by the Chair. Additional meetings of the Board may be called by the Chair or any other director by notice in writing to every other director of the time, place and purpose of the meeting of the Board and the matters to be considered.
- (b) All meetings of the Board shall, unless held by telephone or video conference, be held within the Province of Ontario.

- (c) Any one or more of the directors may participate in a meeting of the Board by any telephonic or video device which permits all participants in the meeting to communicate with each other simultaneously and instantaneously, and such participation shall be deemed to constitute attendance at the meeting of the Board for the purpose of this Section 4.8. The Chair may determine that any meeting of the Board may be held by telephone or video conference.
- (d) At least seven (7) Business Days prior to each meeting, each director shall be notified in writing of the time, place and purpose of the meeting of the Board and the matters to be considered.
- (e) A director may waive notice of any meeting of the Board by an instrument in writing delivered to the Secretary of the Corporation or the applicable Subsidiary.
- (f) Notwithstanding Section 4.7, in lieu of a meeting of the directors, the consent of the directors with respect to any matter may be evidenced by a resolution in writing (which may be in counterparts) signed by all of the directors.

#### **4.9 Quorum – Meetings of Directors of the Corporation and Subsidiaries.**

- (a) A quorum for a meeting of the Board of the Corporation or applicable Subsidiary, as the case may be, shall consist of a majority of the total number of elected directors (rounded up to the next whole number) provided that, so long as Collingwood and PowerStream are the only Shareholders of the Corporation, at least one (1) director who is a nominee of Collingwood, and at least one (1) director who is a nominee of PowerStream must be present at all meetings of the Board of the Corporation or any Subsidiary, as the case may be.
- (b) If a quorum of directors is not present within thirty (30) minutes after the time appointed for a meeting of a Board of the Corporation or applicable Subsidiary, such meeting shall be adjourned to a date not less than five (5) and not more than fifteen (15) Business Days subsequent to the date originally set for the meeting, as the directors present at the meeting may determine.
- (c) At least two (2) Business Days prior written notice shall be provided to all of the directors of the date for the meeting of a Board of the Corporation or applicable Subsidiary, as the case may be, adjourned pursuant to Section 4.9(b) (the “**Adjourned Meeting**”).
- (d) If a quorum is not present at such adjourned meeting, the Secretary of the Corporation or of the applicable Subsidiary, as the case may be, shall forthwith call a further adjourned meeting (the “**Second Adjourned Meeting**”) of the Board, to be held not later than five (5) Business Days after the previously Adjourned Meeting was to be held and shall provide at least two (2) Business Days prior written notice thereof to the Shareholders. The Shareholders may:
  - (i) cause their respective nominee directors to attend, (or may remove their nominee directors and nominate directors to be elected as replacement



directors in accordance with Section 4.6 and may cause such replacement directors to attend) the Second Adjourned Meeting; or

- (ii) waive their right to have their nominee director or replacement director attend the Second Adjourned Meeting, however for greater certainty, the Second Adjourned Meeting may not proceed if the quorum requirements set forth in Section 4.9(a) are not met.
- (e) If a quorum is not present at the Second Adjourned Meeting, the Secretary of the Corporation or of the applicable Subsidiary, as the case may be, shall forthwith call a further adjourned meeting (the “**Third Adjourned Meeting**”) of the Board, to be held not later than five (5) Business Days after the Second Adjourned Meeting was to be held and shall provide at least two (2) Business Days prior written notice thereof to the Shareholders. The Shareholders may:
- (i) cause their respective nominee directors to attend, (or may remove their nominee directors and nominate directors to be elected as replacement directors in accordance with Section 4.6 and may cause such replacement directors to attend), the Third Adjourned Meeting; or
  - (ii) failing such attendance pursuant to Section 4.9(e)(i), the Third Adjourned Meeting shall be validly constituted if nominee directors or replacement directors of at least two Shareholders are present at the Third Adjourned Meeting, notwithstanding the quorum requirements set forth in Section 4.9(a).

**4.10 Vacancies.** In the event of any vacancy occurring on a Board by reason of the death, disqualification, inability to act or resignation of any director (the “**Former Director**”), the Shareholder entitled to nominate the Former Director shall nominate another individual to replace the Former Director in order to fill such vacancy as soon as reasonably possible, and the Shareholders shall vote their Shares to elect such nominee accordingly.

**4.11 Insurance.** The Corporation or applicable Subsidiary shall acquire and maintain insurance coverage for the directors and officers of the Corporation as the Board may determine from time to time. In the event that such insurance coverage ceases to be available to the directors for any reason, each Shareholder shall be responsible for insuring its own nominees.

**4.12 Auditor.** \_\_\_\_\_ shall be appointed as the initial auditor of the Corporation and shall hold office until such time as the Shareholders select a replacement.

**4.13 Corporate Governance Matters.** The Board shall supervise the management of the business and affairs of the Corporation or applicable Subsidiary and, in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation or Subsidiary and each director shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

**4.14 Board Committees.** The Board and each Subsidiary Board may establish committees at its discretion. The Shareholders anticipate that the Board will establish at least the following committees:

- (a) Audit and Finance Committee to review financial results and establish risk management policies; and
- (b) Human Resources and Governance Committee to determine and review human resources policies and corporate governance matters including senior management compensation.

**ARTICLE 5**  
**APPROVAL OF CERTAIN CORPORATE ACTIONS**

**5.1 Shareholder Approval.**

No action shall be taken by the Corporation or any Subsidiary with respect to any of the matters set out below unless first approved by all the Shareholders:

- (a) to acquire by way of purchase of, or merger or amalgamation with, any one or more electricity distribution businesses;
- (b) in any financial year, enter into one or more transactions which individually or in the aggregate result in the disposition, lease or sale of any part of the business of the Corporation or a Subsidiary outside of the Ordinary Course of Business;
- (c) entering into any partnership, joint venture or other business venture that would involve the expenditure or investments of funds by the Corporation or any Subsidiary outside of the Ordinary Course of Business or that would change the status of the Corporation or any subsidiary for taxation purposes, under the Electricity Act or the *Income Tax Act* (Canada), *Corporations Tax Act* (Ontario) or other Applicable Law;
- (d) any change in the nature of the business of the Corporation or any Subsidiary, that would involve directly or indirectly any business activity that is not specifically authorized by the OEB Act or other Applicable Law;
- (e) the borrowing of funds outside of the Ordinary Course of Business;
- (f) any one or more expenditures by the Corporation or the Subsidiary outside of the Ordinary Course of Business exceeding the amount of \$500,000.00 in aggregate in any financial year of the Corporation or applicable Subsidiary;
- (g) any sale, transfer or other disposition by the Corporation of any of the shares of any Subsidiary, other than for the purposes of an internal reorganization of the Corporation or Subsidiary in which the proportionate interests of the Shareholders are maintained;

- (h) make, amend or repeal any by-law of the Corporation or any Subsidiary;
- (i) changing or removing any restriction on the business of the Corporation or any Subsidiary;
- (j) creating new classes of shares of the Corporation or any Subsidiary other than for the purposes of an internal reorganization of the Corporation or Subsidiary in which the proportionate interests of the Shareholders are maintained, or in any other manner to amend the Articles to reduce the number of directors;
- (k) the institution of proceedings for any winding up, arrangement or dissolution of the Corporation or any Subsidiary;
- (l) an application to continue the Corporation or any Subsidiary as a corporation under the laws of another jurisdiction;
- (m) issue, or enter into any agreement to issue, any shares of any class, or any securities convertible into any shares of any class of the Corporation or any Subsidiary, including in connection with any transaction pursuant to subsections 5.1(a) and 5.1(c), other than for the purposes of an internal reorganization of the Corporation or Subsidiary in which the proportionate interests of the Shareholders are maintained;
- (n) redeem or purchase any outstanding Shares of the Corporation or any Subsidiary;
- (o) any change in the Dividend Policy of the Corporation approved by the Shareholders pursuant to Section 5.2(c) of this Agreement; and
- (p) any sale, transfer or other disposition by the Corporation of any of the shares of any Subsidiary, other than for the purposes of an internal reorganization of the Corporation in which the proportionate interests of the Shareholders are maintained.

## 5.2 Business Plan and Dividend Policy.

- (a) Within 90 days from the date of this Agreement, the Shareholders shall use their in best good faith efforts to have approved the business plan for the Corporation (the "**Business Plan**") which is a one year business plan and includes capitalization and financing policies for the Corporation.
- (b) The Corporation shall, in each financial year, present an updated business plan for the Corporation, approved by the Board, to the Shareholders for informational purposes.
- (c) As at the date of this Agreement, the Shareholders have approved a policy (a copy of which is attached as Schedule B to this Agreement) (the "**Dividend Policy**") concerning the declaration and payment of dividends by the Corporation on its issued and outstanding Shares from time to time.

**ARTICLE 6**  
**RESTRICTIONS ON SHARE TRANSFERS**

- 6.1 **Standstill Period - Restricted Sales of Shares.** No Shareholder may sell all or any portion of its Shares without the prior written consent of all of the other Shareholders during the Standstill Period. After the Standstill Period has expired, a Shareholder may only sell, transfer, assign or otherwise dispose of the whole or any part of its Shares in accordance with this Agreement.
- 6.2 **Agreement Binding on Transferees.** No Shares of the Corporation or any Subsidiary shall be effectively issued, sold, assigned, transferred, disposed of, or conveyed by a Shareholder to any Person except in accordance with this Agreement and until the proposed transferee or purchaser executes and delivers to the Parties hereto an agreement to the same effect as this Agreement and any further agreement with respect to the Corporation or Subsidiary to which the Shareholders are then, or are then required to be, a party. Upon the proposed transferee or purchaser so doing, such agreements shall enure to the benefit of and be binding upon all of the Parties to them as if all had executed and delivered the same agreements at the same time.
- 6.3 **Permitted Transferees.**
- (a) Subject to the restrictions on transfer or sale in Section 10.5 hereof, a Shareholder may, without the consent of the other Shareholders, transfer any or all of the Shares owned by it to any Person (hereinafter in this Section 6.3 referred to as a “**Permitted Transferee**”) provided that the Permitted Transferee is wholly-owned by such Shareholder or, if such Shareholder is a corporation, the Permitted Transferee is wholly-owned by the Controlling Shareholder of such Shareholder and provided that prior to any such transfer:
- (i) the Permitted Transferee shall undertake in writing, by signing a counterpart of this Agreement, to be bound by the terms and conditions of this Agreement; and
- (ii) the Controlling Shareholder of such Permitted Transferee represents, warrants, and undertakes in writing that it shall wholly own such Permitted Transferee for as long as such Permitted Transferee holds Shares of the Corporation.
- (b) In the event that the transferee of the Shares ceases to be a Permitted Transferee for the purposes of this Section 6.3 then the Shares shall be promptly transferred back to the Shareholder.

**ARTICLE 7**  
**RIGHT OF FIRST REFUSAL**

- 7.1 **First Right of Refusal.**

- (a) Any Shareholder (hereinafter in this Article 7 referred to as the “**Selling Shareholder**”) who desires to transfer or sell all or any portion of its Shares (hereinafter in this Article 7 referred to as the “**Offered Shares**”) after the Standstill Period other than to a Permitted Transferee, shall give notice of such proposed sale (hereinafter in this Article 7 referred to as the “**Sale Notice**”) to the Corporation and to the other Shareholders and shall set out in the Sale Notice the terms upon which and the price at which it desires to sell the Offered Shares (such price being hereinafter in this Article 7 referred to as the “**Purchase Price**”). A Shareholder selling Shares under this Section 7.1 must sell all, and not less than all, of its Offered Shares, unless the other Shareholders otherwise agree.
- (b) Upon the Notice being given, the other Shareholders (hereinafter in this Article 7 referred to as the “**Remaining Shareholders**”) shall have the right to purchase all, but not less than all, of the Offered Shares for the Purchase Price on a Pro Rata basis.

**7.2 Exercise of Right of First Refusal.** The Remaining Shareholders shall have the option, exercisable by giving written notice of the exercise of such option (hereinafter in this Article 7 referred to as the “**Purchase Notice**”) to the Selling Shareholder and the Corporation within thirty (30) days (hereinafter in this Article 7 referred to as the “**Right of First Refusal Period**”) subsequent to the date of deemed receipt, pursuant to Section 12.1 hereof, by the Remaining Shareholders of the Sale Notice, to purchase all but not less than all of the Offered Shares, on a Pro Rata basis, determined on the basis of the ratio of the number of Shares owned by each Remaining Shareholder to the number of Shares owned by all Remaining Shareholders at the Purchase Price and the terms set forth in the Sale Notice. If all the Offered Shares have not been purchased by the Remaining Shareholders then the remaining Offered Shares shall be offered to those Remaining Shareholders which have purchased Offered Shares on a Pro Rata basis until all of the Offered Shares have been purchased. The closing of the sale of the Offered Shares shall occur on the first Business Day following the expiry of the sixty (60) day period following the date of deemed receipt, pursuant to Section 12.1 hereof, by the Remaining Shareholders and the Corporation of the Purchase Notice or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) days after receipt of such approval or required period of notice or on such later date as may be agreed by the Parties.

**7.3 Sale of Shares.** In the event that the Remaining Shareholders do not exercise their right of first refusal pursuant to Section 7.2, the rights of the Remaining Shareholders, subject as hereinafter provided, to purchase the Offered Shares shall forthwith terminate and the Selling Shareholder, subject to the restrictions on transfer or sale specified in Section 10.5 hereof, may sell the Offered Shares to any Person (the “**Prospective Purchaser**”) within ninety (90) days after the termination of the Right of First Refusal Period, for a price not less than the Purchase Price and on other terms no more favourable to the Prospective Purchaser than those set forth in the Sale Notice, provided that the Prospective Purchaser agrees prior to such transaction to be bound by this Agreement and to become a party hereto in place of the Selling Shareholder with respect to the Offered

Shares. If the Offered Shares are not sold within such ninety (90) day period, or, if the completion of such sale requires the prior approval of or notice to a third Person or Governmental Authority under Applicable Law or any instrument or agreement, within thirty (30) days after receipt of such approval or any required period of notice, on such terms, the rights of the Remaining Shareholders pursuant to Sections 7.1 and 7.2 shall again take effect and so on from time to time.

- 7.4 Moratorium on Sales While Purchase Offer Outstanding.** Once a Shareholder gives a Sale Notice pursuant to Section 7.1 hereof, no other Shareholder shall be entitled to give a Sale Notice with respect to Shares until such time as the Offered Shares are either sold to the Remaining Shareholders, or a Prospective Purchaser, as the case may be, in accordance with the terms of this Article 7 or the sale of such Shares to the Prospective Purchaser does not occur within the time limits prescribed in Section 7.3. No Shareholder may proceed with any sale of any of the Shares owned by it without complying with the relevant provisions of this Agreement.

## **ARTICLE 8**

### **PURCHASE OF SHARES ON DEEMED WITHDRAWAL**

#### **8.1 Deemed Withdrawal from the Corporation.**

- (a) Subject to Section 8.1(b), for the purposes of this Article 8, a Shareholder shall be deemed to withdraw from the Corporation on that date when such Shareholder,
- (i) or its Controlling Shareholder: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar Applicable Law for the protection of creditors, including, the *Bankruptcy and Insolvency Act* (Canada) and the *Companies Creditors Arrangement Act* (Canada), the *Municipal Affairs Act* (Ontario) or other statute applicable to insolvent municipalities or has such petition filed against it and such petition is not withdrawn or dismissed for sixty (60) days after such filing; (ii) otherwise becomes bankrupt or insolvent (however evidenced); or (iii) is unable to pay its debts as they fall due;
  - (ii) fails, refuses or neglects to conform to any of the material terms and conditions of this Agreement, and fails to remedy any such material default within thirty (30) days of the deemed receipt, pursuant to Section 12.1 hereof, of a written notice from any other Shareholder giving details of such material default; or
  - (iii) has all or any portion of its Shares of the Corporation realized upon by an encumbrancer.
- (b) The Shareholders may unanimously agree to waive the provisions of this Article 8 with respect to any Shareholder that would otherwise have been deemed to withdraw from the Corporation pursuant to Section 8.1(a).

**8.2 Purchase of Shares on a Shareholder's Withdrawal from the Corporation.** In the event that a Shareholder is deemed to have withdrawn from the Corporation pursuant to the provisions of Section 8.1(a) hereof and the Shareholders have not agreed to waive the application of this Article 8 in accordance with Section 8.1(b), the Corporation irrevocably agrees to purchase, on the expiry of the one hundred and fifty (150) day period following the occurrence of such event, all and not less than all of the Shares of the Shareholder which is deemed to have withdrawn from the Corporation (hereinafter in this Section 8.2 referred to as the "**Withdrawing Shareholder**") at the Share Purchase Price. The closing of the sale of the Shares of the Withdrawing Shareholder to the Corporation shall take place at the offices of the Corporation at the address designated in Section 12.1 hereof at 10:00 in the morning (Toronto time) on the first Business Day following the expiry of the aforesaid one hundred and fifty (150) day period. The Share Purchase Price, determined pursuant to Section 8.4 hereof, shall be paid at such closing in Canadian dollars. In the event that the Corporation is not, at the time of such purchase of Shares, capable of fulfilling its obligations to pay for such Shares, either because it cannot do so in compliance with the OBCA, or other Applicable Law to the same effect, the sale of such Shares to the Corporation shall be completed with the balance of the Share Purchase Price for such Shares to be paid by the Corporation as soon as it is lawfully able to do so.

**8.3 Sale of Shares on Deemed Withdrawal from the Corporation.**

- (a) Upon a Shareholder being deemed to have withdrawn from the Corporation pursuant to the provisions of Section 8.1(a) hereof, such Shareholder hereby irrevocably offers to sell all of its Shares to the Corporation at a price per Share (hereinafter in this Article 8 the "**Share Purchase Price**") determined in the manner provided in Section 8.4 hereof and Schedule A hereto.
- (b) In all of the circumstances provided in Section 8.1(a), the remaining Shareholders shall have the right to require that the Corporation assign to them the right or obligation of the Corporation to purchase any or all of the Shares of a Shareholder deemed to have withdrawn from the Corporation as aforesaid and, pursuant to such assignment, the remaining Shareholders shall have the right to purchase such Shares, provided that in the opinion of tax counsel to the Corporation, the Withdrawing Shareholder will suffer no significant prejudice from an income tax perspective as a result of such Shares being purchased by the remaining Shareholders rather than by the Corporation.
- (c) In the event that the remaining Shareholders purchase such Shares, they shall be entitled to purchase them on a Pro Rata basis in proportion to their respective holdings of Shares or in any other proportion as they may choose, and the provisions of Section 8.2 of this Agreement shall apply *mutatis mutandis* provided however, that no Shareholder shall be obliged to purchase any such Shares.

**8.4 Share Purchase Price Determination.** The Share Purchase Price for the purposes of this Article 8 shall mean the fair market value (the "**Fair Market Value**") of each Share as at the financial year end of the Corporation immediately preceding the date

(hereinafter in this Article 8 (the “**Withdrawal Date**”) on which a Shareholder is deemed to withdraw from the Corporation as provided in Section 8.1(a). Such Share Purchase Price shall be determined in the manner provided in Schedule A hereto within the one hundred and twenty (120) days immediately following the Withdrawal Date. Fair Market Value per share shall be calculated on a pro-rata basis using “en bloc” Fair Market Value, without any premium or discount.

- 8.5 Cancellation of Shares.** Upon the acquisition of any Shares by the Corporation pursuant to this Article 8 of this Agreement, such Shares shall be cancelled and shall not be reissued.

## **ARTICLE 9** **BUY-SELL PROVISIONS**

**9.1 Buy/Sell Notice.**

- (a) Subject to paragraph (b), either of the Shareholders (the “**Offeror**”) shall be entitled to give notice (the “**Buy/Sell Notice**”) to the other Shareholder (the “**Offeree**”), which Buy/Sell Notice shall be signed by the Offeror and shall contain the following:
- (i) the price at which the Offeror will purchase or sell each Share;
  - (ii) an unconditional offer, irrevocable without the written consent of the Offeree, to purchase all of common shares beneficially owned by the Offeree at the said prices and upon and subject to the terms set forth in the Buy/Sell Notice; and
  - (iii) an unconditional offer, irrevocable without the written consent of the Offeree, to sell all of the Shares beneficially owned by the Offeror at the said prices and upon and subject to the terms set forth in the Buy/Sell Notice.
- (b) No Shareholder is entitled to exercise the rights provided for in paragraph (a) until the expiry of the Standstill Period.

- 9.2 Acceptance.** The Offeree shall be entitled to accept either of the offers contained in the Buy/Sell Notice by notice in writing delivered to the Offeror within 20 days of receipt by the Offeree of the Buy/Sell Notice.

- 9.3 Purchase and Sale.** If the Offeree accepts the offer referred to in Subsection 9.1(a)(ii), the Offeree shall sell to the Offeror and the Offeror shall purchase from the Offeree all of the Shares beneficially owned by the Offeror (the “**Offered Shares**”) at the prices and, subject to the provisions of this Agreement, upon the terms set forth in the Buy/Sell Notice. If the Offeree accepts the offer referred to in Subsection 9.1(a)(iii), the Offeree shall purchase from the Offeror and the Offeror shall sell to the Offeree all of the shares of the Corporation beneficially owned by the Offeror at the prices and, subject to the provisions of this agreement, upon the terms set forth in the Buy/Sell Notice. If the



Offeree does not accept either of the said offers within the said 20 day period, the Offeree shall be deemed to have accepted the offer referred to in Subsection 9.1(a)(ii), on the last day of the said 20 day period and the Offeree shall sell to the Offeror and the Offeror shall purchase from the Offeree all of the Offered Shares beneficially owned by the Offeree at the prices set forth in the Buy/Sell Notice. Notwithstanding anything in the Buy/Sell Notice to the contrary, the aggregate purchase price for the Offered Shares shall be paid in full at the Time of Closing. The closing of a transaction of purchase and sale contemplated in this Article shall take place at the on the date (the “**Date of Closing**”) which is 15 days following the acceptance by the Offeree of one of the offers contained in the Buy/Sell Notice. If, at the Time of Closing, a Shareholder (the “**Refusing Shareholder**”) neglects or refuses to complete the transaction of purchase and sale herein contemplated, the other Shareholder (the “**Enforcing Shareholder**”) shall have the right, without prejudice to any other rights which the Enforcing Shareholder may have, to give to the Refusing Shareholder, within five days of the Date of Closing, a notice that the Enforcing Shareholder intends to purchase from the Refusing Shareholder all of the Shares beneficially owned by the Refusing Shareholder at a purchase price for each share equal to 90% of the price for shares set forth in the Buy/Sell Notice (the “**New Purchase Price**”). The resulting transaction of purchase and sale shall take place on the date (the “**New Date of Closing**”) which is 15 days following the receipt or deemed receipt of the aforesaid notice. On the New Date of Closing, the Refusing Shareholder shall sell all of the Shares beneficially owned by it to the Enforcing Shareholder who shall purchase the same for the New Purchase Price, which shall be payable in accordance with the terms contained in this Article for the payment of the purchase price of the Offered Shares.

**ARTICLE 10**  
**PROVISIONS APPLICABLE TO SALES OF SHARES**

- 10.1 Application to All Sales.** Except as, or in addition to what, may otherwise be provided in this Agreement, this Article 10 shall apply to any sale of Shares effected pursuant to the provisions of this Agreement.
- 10.2 Closing.** The closing of all sales of Shares effected pursuant to this Agreement shall take place at the offices of the Corporation at the address designated in Section 12.1 hereof, at the Time of Closing on the date stipulated, either pursuant to the provisions hereof or pursuant to any agreement executed in connection with any such sale, as the date on which such closing is to occur.
- 10.3 Cancellation of Share Certificates.** The President of the Corporation, or such other officer as may be designated by resolution of the directors of the Corporation shall attend all closings of any such sale of Shares and shall deliver to the Corporation for cancellation share certificates evidencing Shares which are to be sold and shall take custody of new share certificates, if any, issued in replacement of such cancelled share certificates so that at all times the Corporation shall have custody of share certificates representing all of the Shares.
- 10.4 Resignation of Seller’s Nominees.** At the closing of any sale of Shares, the Shareholder selling its Shares shall cause to be delivered to the Corporation signed resignations of its

nominees as directors of the Corporation and any Subsidiary, and shall assign and transfer to the purchaser of such Shares, all of its right, title and interest in such Shares.

**10.5 Transfer Taxes and Other Tax Impacts of a Proposed Sale.**

- (a) A Shareholder selling Shares to any Person agrees that, if permitted by the Electricity Act and any other Applicable Law to claim any credit against transfer tax payable by it pursuant to Subsection 94(1) of the Electricity Act, such Shareholder will claim only such proportion of the credits available in respect of any taxation year of the Corporation pursuant to Subsection 94(4) that is pro rata to: (i) the number of Shares it holds at such time in the Corporation to all outstanding Shares of the Corporation; and (ii) the number of days in such taxation year in which it holds such Shares.
- (b) In the event that any proposed sale or transfer of Shares would result or results in tax or an amount in respect of payments in lieu of tax being exigible from the Corporation or any Shareholder other than the Shareholder selling its Shares (the "Non-Selling Shareholder(s)"), whether transfer tax, income tax, capital tax or other tax (and including any taxes or related expenses resulting from the Corporation no longer being tax exempt pursuant to Section 149(1)(d.6) of the *Income Tax Act* (Canada)), all such tax and expenses shall be an expense to the selling Shareholder which shall indemnify the Corporation with respect thereto, and notwithstanding any other provision of this Agreement to the contrary, the proposed sale or transfer shall not be completed unless all such tax and expenses of the Corporation or any Non-Selling Shareholder are first paid in full by the Shareholder which wishes to sell its Shares.
- (c) A Shareholder selling Shares to any Person shall, as required by the Electricity Act or any other Applicable Law, pay all transfer taxes payable under the Electricity Act in respect of such sale such that the sale shall not be void.

**10.6 Additional Provisions: Loans, Guarantees.** In conjunction with any sale of all Shares:

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

- 10.7 **Priority of Liquidity Provisions.** In the event that any initiating notice has been delivered by any Party pursuant to Article 7, Article 8 or Article 9 of this Agreement, then no additional notice may be given by a Party under any such other Articles of this Agreement until such time as the process and procedures commenced by the first initiating notice have been completed in accordance with this Agreement.

**ARTICLE 11**  
**CONFIDENTIALITY**

- 11.1 **Confidential Information.** The Shareholders hereby acknowledge that they have had and will have access to confidential information and trade secrets concerning the business of the Corporation and the Corporation's Affiliates, if any, and their customers and suppliers (hereinafter in this Article 11 referred to as the "**Information**") and they each undertake and agree that they shall not, and their Controlling Shareholder shall not, directly or indirectly, use, disclose or divulge to any Person or other entity any of the Information otherwise than in the ordinary course of business of the Corporation, and its Affiliates and as may be required by Applicable Law or order of any Governmental Authority.
- 11.2 **Survival of Obligations.** The obligations and covenants in this Article 11 shall survive the termination of this Agreement.

**ARTICLE 12**  
**NOTICES**

- 12.1 **Notices.** Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be given by facsimile or other means of electronic communication or by hand-delivery as provided below. Any such notice or other communication, if sent by facsimile or other means of electronic communication, shall be deemed to have been received on the Business Day following the sending, or if delivered by hand, shall be deemed to have been received at the time it is delivered to the applicable address noted below either to the individual designated below or to an individual at such address having apparent authority to accept deliveries on behalf of the addressee. Notice of change of address shall also be governed by this Section 12.1. Notices and other communications shall be addressed as follows:

- (a) in the case of Collingwood:

P.O. Box 189  
43 Stewart Road  
Collingwood, ON L9Y 3Z5

Attention: Clerk  
Fax No.: (705) 445-2448

- (b) in the case of PowerStream:

161 Cityview Boulevard

Vaughan, ON L4H 0A9

Attention: Dennis Nolan, Executive Vice-President, Corporate Services  
and Secretary

Fax No.: (905) 532-4616

(c) in the case of Corporation and the Subsidiaries:

c/o the Corporation  
P.O. Box 189  
43 Stewart Road  
Collingwood, ON L9Y 3Z5

Attention: Ed Houghton  
Fax No.: (705) 445-2549

With a copy to:

PowerStream  
161 City View Boulevard  
Vaughan, ON L4H 0A9

Attention: Dennis Nolan, Executive Vice-President, Corporate Services  
and Secretary

Fax No.: (905) 532-4616

Notwithstanding the foregoing, any notice or other communication required or permitted to be given by any party pursuant to or in connection with any arbitration procedures contained in this Agreement or in any Schedule to this Agreement may only be delivered by hand.

### **ARTICLE 13** **DISPUTE RESOLUTION**

- 13.1 Disputes.** Each Shareholder shall appoint one or more representatives who shall be responsible for administering this Agreement on its behalf and for representing its respective interests in disputes relating to this Agreement. Any dispute between Shareholders relating to this Agreement that is not resolved between such representatives within ten (10) Business Days of a date that a Party notifies the other Party of such dispute shall be referred by the Parties' representatives in writing to the senior management of each Shareholder for resolution. Such senior management shall use good faith efforts to resolve the dispute for a period of up to ten (10) Business Days.
- 13.2 Arbitration.** If agreed to by all parties to a dispute that is not resolved by the procedure set forth in Section 13.1 above, such dispute may be referred to and resolved by arbitration by a single arbitrator in accordance with the provisions of the *Arbitration Act, 1991* (Ontario), subject to the following modifications and additions:

- (a) The arbitration shall take place in the Province of Ontario, and shall be conducted in English;
- (b) The arbitration shall be conducted by a single arbitrator having no financial, business or personal interest in the outcome of the arbitration. The arbitrator shall be appointed jointly by agreement of the parties to such dispute. In the event the parties to such dispute are unable to agree on the appointment of the arbitrator within ten (10) days after notice of a demand for arbitration is given by a party and agreed to by the other parties to such dispute, then the arbitrator shall be selected pursuant to the provisions of the *Arbitration Act, 1991* (Ontario).
- (c) The arbitrator shall have the authority to award any remedy or relief that a court could order or grant in accordance with this Agreement including, without limitation, specific performance of any obligation, the issuance of an interim, interlocutory or permanent injunction, or the imposition of sanctions for abuse or frustration of the arbitration process.
- (d) The arbitral award shall be in writing, stating the reasons for the award and be final and binding on the parties to such dispute with no rights of appeal.

**ARTICLE 14**  
**MISCELLANEOUS**

- 14.1 **Termination.** This Agreement shall terminate upon (a) the written agreement of all the Parties hereto to this effect, (b) the bankruptcy, receivership, or dissolution of the Corporation, or (c) the ownership of all the Shares of the Corporation, excluding any Subsidiary, by one Shareholder.
- 14.2 **Successors and Assigns.** This Agreement shall be binding upon, and enure to the benefit of, the Parties hereto and their respective successors and permitted assigns.
- 14.3 **Assignment.** Except as specifically provided in this Agreement, none of the Parties hereto may assign its rights or obligations under this Agreement without the prior written consent of all of the other Parties hereto.
- 14.4 **Time is of the Essence.** Time shall be the essence of this Agreement in all respects.
- 14.5 **Further Assurances.** Each Party hereto shall promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and matters in connection with this Agreement that the other Parties may reasonably require, for the purposes of giving effect to this Agreement.
- 14.6 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or telecopied form and the Parties shall accept any signatures received by a receiving telecopy machine as original signatures of the Parties; provided, however, that

any Party providing its signature in such manner shall promptly forward to the other Parties an original of the signed copy of this Agreement which was so telecopied.

**14.7 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable herein.

**14.8 Amendments and Waivers.**

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

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

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

**14.10 Collingwood HoldCo.** Notwithstanding any other provision of this Agreement, Collingwood shall have the right in its sole and absolute discretion without the consent of PowerStream, following written notice to PowerStream:

(a) to assign this Agreement and all benefits and obligations hereunder to its wholly-owned subsidiary (the "**HoldCo**"), which shall assume the obligations and liabilities of Collingwood under this Agreement and be novated into this Agreement in the place and stead of Collingwood (except as expressly provided in this Section 14.10), and this Agreement shall thereafter apply to HoldCo *mutatis mutandis*; and

(b) to transfer to HoldCo all of its shares in the capital of the Corporation;

provided that:

(c) the assignment described in (a) above may not take place unless and until the transfer described in (b) above; and

(d) HoldCo agrees in writing with Collingwood and PowerStream to assume and be bound by the terms and conditions of this Agreement.

The transfer described in (b) above shall be deemed not to be a transfer of or sale of Shares pursuant to Article 6 or Article 7 of this Agreement nor shall it give rise to any rights of PowerStream thereunder of consent, first refusal or otherwise. Notwithstanding the foregoing, Collingwood shall remain liable to PowerStream for any obligations and liabilities of HoldCo under this Agreement.

**14.11 Certain Transactions.** PowerStream shall be entitled to merge with, become affiliated with, acquire any equity in, enter into any outsourcing, consulting, service or management agreement or other business arrangements with, directly or indirectly, any Distributor (as defined in the *Electricity Act, 1988* (Ontario), except for the restrictions on such business arrangements as have been mutually agreed upon in writing by the Parties.

**[NEXT PAGE IS THE EXECUTION PAGE]**

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

**THE CORPORATION OF THE TOWN  
OF COLLINGWOOD**

By: \_\_\_\_\_  
Name: Sandra Cooper  
Title: Mayor

By: \_\_\_\_\_  
Name: Sara Almas  
Title: Clerk

**POWERSTREAM INC.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**COLLINGWOOD UTILITY SERVICES  
CORP.**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



**SCHEDULE A**  
**VALUATION METHOD**

In this Schedule, the vendor and the purchaser of the Shares being sold pursuant to Article 8 of this Agreement are called the “**Vendor**” and the “**Purchaser**”, respectively.

**Negotiation.** If the value of the Shares must be established pursuant to any provision of this Agreement, then the Vendor and the Purchaser shall negotiate honestly and in good faith to agree upon the fair market value of the Shares.

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

- (a) the Purchaser shall by notice to the Vendor nominate three independent business valuers each of whom deals at Arm’s Length with the Purchaser and has experience in valuing businesses similar to the business carried on by the Corporation; the notice must be accompanied by a *curriculum vitae* of each business valuator containing the following information concerning the nominee’s:
  - (i) educational background and professional qualifications;
  - (ii) prior business valuation experience, including details of the nature of the business valued and the methodology used; and
  - (iii) the business valuation principles that the valuator proposes to use to determine the fair value of the Shares.
- (b) The Vendor shall select one of the three business valutors nominated by the Purchaser by notice to be given to the Purchaser within two Business Days after the day on which the Vendor receives the nomination notice, failing which, the Purchaser may select one of the business valutors. The business valuator so selected shall be the “**Valuator**” for the purposes of this Agreement and shall proceed to determine the fair market value of all of the Shares being sold in accordance with the provisions of this Schedule A and Article 8.

**Valuation by Valuator.** The Valuator agreed upon or selected in accordance with this Schedule A to determine the fair market value of the Shares being sold shall act as a business valuator and not as an arbitrator or umpire. The Valuator shall apply such business valuation principles as the Valuator deems appropriate. The Vendor and the Purchaser shall provide guidance to the Valuator in respect of the valuation methodologies and approaches to be used, which would include a discounted cash flow approach. Subject to this guidance, the Valuator may consult such other expert valutors as it considers advisable. The fair market value of the Shares shall be determined without regard for any restrictions applying to the transfer of Shares. The fees and disbursements of the Valuator shall be borne equally by the Vendor and the Purchaser.

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

**SCHEDULE B**  
**CORPORATION AND SUBSIDIARIES DIVIDEND POLICY**

The Dividend Policy for the Corporation and its Subsidiaries is based on the philosophy that the purpose of the dividend policy is to provide the Shareholders with a steady income stream from dividends while providing Collus with an appropriate capital structure and working capital level in order to operate as a viable business. The Dividend Policy philosophy would be consistent with the objectives and guiding principles of Collus.

Dividend amounts will be determined as follows:

Each entity shall normally pay a minimum of 50% of annual net income, as dividends, with consideration given to the following:

- (a) cash position at the beginning of the year;
- (b) working capital requirements for the current year;
- (c) net capital expenditures required for the current year; and
- (d) other cash requirements of the Corporation and the Subsidiaries, as applicable.

**SCHEDULE C**  
**CHARTER DOCUMENTS OF CORPORATION AND EACH SUBSIDIARY**

11368862.16

**Schedule C**

**Recapitalization Dividends and Working Capital Adjustment Calculations**

See attached.

## Schedule C – Recapitalization Dividend

### Overview

The closing adjustments to Collus' capital structure will be made on the basis described below. These adjustments reflect the intent of this Agreement and the valuation that the Agreement, and the mechanisms set out in Section 2.1 of this Agreement in particular, were based on.

For the purposes of determining the Recapitalization Dividend Amount (and the Final Recapitalization Dividend Amount), rate base is calculated as the simple average of net fixed assets as presented in the Closing Date Financial Statements of Collus plus Deemed Working Capital. "Deemed Working Capital" is calculated according to the OEB definition and is equal to 15% of one year's Cost of Power, as defined by the OEB, plus 15% of one year's OM&A expenses.

### Methodology for Calculation

All accounting terms shall be applied in the same manner as the way the 2010 Financial Statements for the Corporation and the Subsidiaries were developed. Rate base, deemed debt, deemed equity and Deemed Working Capital will be calculated using the Final 2011 Financial Statements of Collus. Actual working capital will be calculated using the Closing Date Financial Statements of Collus. All financial statements will be based on Canadian GAAP and consistent with past practice.

### Calculations

The following is an illustrative example of the calculation of the Recapitalization Dividend Amount for Collus using Collus' 2010 audited financial statements.

#### **Rate Base**

Based on Collus' 2010 Financial Statements, Collus' rate base is calculated as follows:

Average Net Fixed Assets (as per page 2 of Collus' 2010 audited financial statements):

2010 Net Fixed Assets (PPE)	\$12,763,581
2009 Net Fixed Assets (PPE)	\$11,924,206
<b>Average Net Fixed Assets (PPE)</b>	<b>\$12,343,894</b>

Note that computer software – an intangible asset – is excluded from the calculation of Net Fixed Assets / PPE.

### Deemed Working Capital

Deemed Working Capital was calculated according to the OEB definition. Deemed Working Capital is 15% of one year's Cost of Power plus 15% of one year's OM&A expenses (excluding amortization).

Cost of Power and OM&A expenses are as per page 4 of Collus' 2010 audited financial statements. Based on Collus' 2010 Financial Statements, Collus' Deemed Working Capital is:

2010 Cost of Power	\$25,971,849
2010 OM&A Expenses:	
Distribution and Transmission	\$ 1,883,667
Billing and Collecting	\$ 1,154,122
General Administration	\$ 1,244,511
Total OM&A Expenses	\$ 4,282,300
Total OM&A + Cost of Power	\$30,254,149
15% of Total OM&A + Cost of Power	\$ 4,538,122

Based on the above calculations, Collus' rate base for 2010 is \$12,343,894 + \$4,538,122 = **\$16,882,016**.

The OEB's deemed capital structure for electricity utilities is 60% debt and 40% equity. Based on Collus' 2010 rate base number as calculated above, Collus' deemed debt is:

Collus 2010 Rate Base	\$16,882,016
Deemed Capital Structure as per OEB	60%
<b>Deemed Debt</b>	<b>\$10,129,210</b>

Based on Collus' 2010 Financial Statements, Collus' actual debt at December 31, 2010 is:

Current Portion of Long-Term Debt	\$ 200,000
Long-Term Debt / Note	\$4,410,170
<b>Total Actual Debt</b>	<b>\$4,610,170</b>

The amount of new debt that Collus would require to be at the deemed capital structure is:

Deemed Debt	\$10,129,210
Less: Actual Debt	\$ 4,610,170
<b>New Debt Required to be at 60% debt</b>	<b>\$ 5,519,040</b>

### Actual Working Capital

Actual Working Capital at December 31, 2010 was calculated as Current Assets minus the Current Liabilities plus the current portion of long-term debt as reported in the 2010 Collus Financial Statements.

Current Assets	\$11,451,746
Less: Current Liabilities	\$ 8,015,044
Add: Current Portion of Long Term Debt	\$ 200,000
Actual Working Capital	\$ 3,636,702

Note that the current portion of Regulatory Assets is not to be included in Current Assets, and the current portion of Regulatory Liabilities is not to be included in Current Liabilities.

### Working Capital Surplus (Deficiency)

Working capital surplus (deficiency) is defined as the difference between Deemed Working Capital and Actual Working Capital. The following chart summarizes the Collus' working capital surplus (deficiency) based on Collus' 2010 Financial Statements.

	<b>Collus</b>
Deemed Working Capital	\$4,538,122
Actual Working Capital	\$3,636,702
<b>Surplus (Deficiency)</b>	<b>(\$ 901,420)</b>

Based on the 2010 Financial Statements, Collus has a working capital deficiency of \$901,420. The way that these amounts are adjusted for is dependent on the respective capital structure.

Total capitalization is considered to be the total debt and equity as listed on the balance sheet of the audited financial statements with an adjustment to allow for the appropriate level of working capital.

The following table provides an overview of the transition of Collus' financial position on December 31, 2010 to the targeted capital structure, and the required changes.



	COLLUS	COLLUS after Working Capital Adjustment	Required Change for WC Shortfall	Predicted Balance on Closing	Required Change
Shareholder Debt	\$1,710,170	\$1,710,170	0	\$1,710,170	Nil
Ontario Infrastructure Projects Corporation	\$2,900,000	\$2,900,000	0	\$2,900,000	Nil
New Debt		\$5,519,040	\$5,519,040	\$5,519,040	Nil
Total Debt	\$4,610,170	\$10,129,210		\$10,129,210	
Shareholders Equity	\$10,781,970	\$10,781,970	0	\$10,781,970	Nil
<b>Working Capital</b>			<b>(\$901,420)*</b>	<b>\$4,538,122</b>	
<b>Recapitalization Dividend Amount</b>			<b>\$4,617,620</b>	<b>(\$4,617,620)</b>	
Total Capital	\$15,392,140	\$20,911,180		\$16,293,560	Nil
Debt : Total Capital	29.95%	48.4%		62.2%	
Ratebase	<b>\$16,882,016</b>				
Debt : Ratebase	<b>27.3%</b>	<b>60.0%</b>	<b>60.0%</b>	<b>60.0%</b>	

*\*Amount required to satisfy the working capital adjustment.*

### **Recapitalization Dividend**

As at December 31, 2010, there is a working capital deficiency of \$901K. In order to transition to a 60% debt-to-rate base level, Collus would require an additional \$5.519M in new debt. After the working capital is adjusted to the deemed level, there is approximately \$4.618M which can be paid out as the Recapitalization Dividend from Collus to the Corporation, and subsequently from the Corporation to the Vendor.

### **Recapitalization Dividend Amount and Final Recapitalization Dividend Amount**

The Recapitalization Dividend Amount and Final Recapitalization Dividend Amount will be determined as follows:

- Rate base, deemed debt, deemed equity and deemed working capital will be calculated using the Final 2011 Financial Statements of Collus, calculated on the same basis as that calculated in the example presented above for 2010.

- Actual Working Capital and the Working Capital Surplus (Deficiency) will be calculated based on the Closing Date Financial Statements of Collus. The Final Recapitalization Dividend Amount, as adjusted by the Working Capital Adjustment as provided for in Section 2.1(7) of this Agreement, will be determined on the same basis as in the example presented above, subject to the following items.
- Any pre-closing debt principal repayments made by Collus between January 1, 2012 and the Closing Date will also be added to Actual Working Capital at the Closing Date (e.g. a \$100,000 payment to Infrastructure Ontario in April 2012 will be added to Actual Working Capital) for purposes of calculating the Final Recapitalization Dividend Amount and for the purposes of the Working Capital Adjustment Documents.
- If the combined net book value of the Regulatory Assets and Regulatory Liabilities of Collus is a net liability position of less than \$500,000 (i.e. either a net asset position or a net liability position between \$0 and \$500,000) as at the Closing Date, as presented in the Closing Date Financial Statements of Collus prepared under Canadian GAAP consistent with past practice, then the Actual Working Capital of Collus at the Closing Date (for purposes of calculating the Final Recapitalization Dividend Amount and Working Capital Adjustment) shall be increased to include the difference between the net book value of Net Regulatory Assets and Regulatory Liabilities at the Closing Date and a net Regulatory Assets and Liabilities hurdle position of (\$500,000). Several illustrative examples follow:

Net asset (liability) position in \$'s	Scenario A	Scenario B	Scenario C
	Closing Date 2012	Closing Date 2012	Closing Date 2012
Net regulatory assets / liabilities position at the Closing Date	(\$1,000,000)	(\$350,000)	\$250,000 asset
Hurdle rate – liability position	(\$500,000)	(\$500,000)	(\$500,000)
Adjusted Increase to Actual Working Capital Calculation at the Closing Date	\$0	+\$150,000	+\$750,000

The Actual Working Capital at the Closing Date (for purposes of calculating the Final Recapitalization Dividend and Working Capital Adjustment) shall be increased under Scenarios B and C to reflect the use of working capital to fund the reduction of the Net Regulatory Assets and Liabilities balance of Collus, which was in a net liability position of (\$1,411,987) as at December 31, 2010. No adjustment to Actual Working Capital would be necessary under Scenario A.

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**Schedule D**

**Escrow Agreement**

See attached.

## ESCROW AGREEMENT

THIS AGREEMENT made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BETWEEN:

**POWERSTREAM INC.**, a corporation incorporated under the laws of Ontario (the "**Purchaser**")

- and -

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**, a corporation incorporated under the *Municipal Act* (Ontario) ("**Vendor**")

- and -

**AIRD & BERLIS LLP**, a partnership formed under the laws of the Province of Ontario (the "**Escrow Agent**")

**WHEREAS** the Purchaser, the Vendor, Collingwood Utility Services Corp. (the "**Corporation**"), Collus Power Corp., Collus Solutions Corp. and Collus Energy Corp. have entered into a share purchase agreement in respect of the sale by the Vendor to the Purchaser of 50% of its shares in the Corporation, dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2012 (the "**Share Purchase Agreement**");

**AND WHEREAS** the provisions of the Share Purchase Agreement provide for the deposit of \$1,000,000.00, referred to in the Share Purchase Agreement as the "Holdback Amount" (the "**Funds**") with the Vendor's counsel to be held in trust by such law firm;

**AND WHEREAS** all terms not defined herein shall have the meanings ascribed to them respectively in the Share Purchase Agreement;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and promises contained in this agreement and the Share Purchase Agreement, the parties hereto agree as follows:

**1. Designation of Escrow Agent**

- 1.1 Pursuant to the provisions of Section 2.1 of the Share Purchase Agreement, the Vendor and the Purchaser hereby designate the Escrow Agent to act as the escrow agent referred to in the Share Purchase Agreement.

1.2 The Escrow Agent hereby agrees to act as the escrow agent referred to in the Share Purchase Agreement on the terms and conditions set out herein.

1.3 In discharging its duties under this agreement the Escrow Agent shall have regard only to the provisions hereof and no other agreement, document or instrument and specifically the Escrow Agent shall have no obligation to read or examine the Share Purchase Agreement except to the extent that terms defined therein are used herein.

## 2. **Delivery of Funds**

2.1 Collus shall deliver the Funds to the Escrow Agent upon the payment by Collus of the Recapitalization Dividend to the Corporation by means of a certified cheque or banker's draft.

2.2 If Collus fails to deliver the Funds in full the Escrow Agent shall have no obligations, liability or responsibility under this agreement whatsoever, and this agreement shall be of no force and effect.

## 3. **Instructions to Escrow Agent**

3.1 Upon receipt of the Funds, the Escrow Agent shall deposit the Funds in a separate trust account (the "**Escrow Account**") for the benefit of the Purchaser and the Vendor jointly, to be dealt with by the Escrow Agent on the trusts and subject to the terms and conditions hereof.

3.2 The Funds shall not be disbursed or released from escrow, transferred within escrow or dealt with in any other manner whatsoever except pursuant to the terms and conditions of this agreement.

3.3 The Escrow Agent shall not be required to invest the Escrow Funds.

3.4 The Funds shall be held by the Escrow Agent until the earliest occurrence of one of the following:

- (a) the date on which the Escrow Agent receives an Escrow Release Direction (as hereinafter defined);
- (b) the date on which the Escrow Agent receives a joint direction in writing, signed by both the Vendor and the Purchaser, specifying to whom the Funds should be released;
- (c) at the option of the Escrow Agent,
  - (i) the date the Escrow Agent receives an order of an arbitrator pursuant to Section 8.2 of the Share Purchase Agreement, or the order of a court of competent jurisdiction, in both cases whether a right of appeal lies therefrom or not; or

- (ii) the date the Escrow Agent pays the Funds into court or interpleader of Funds pursuant to Section 3.9 hereof;

Any of the events listed in paragraphs (a), (b), (c) or (d) shall be either instruction, or payment, with respect to the full amount of the Funds.

- 3.5 Upon either the determination by the Vendor and the Purchaser of the Final Recapitalization Dividend Amount, and any Working Capital Deficiency or Working Capital Surplus as part of the same, and the Final Additional Closing Dividend Amount, the Purchaser and the Vendor shall execute and deliver to the Escrow Agent a joint direction in writing, in the form of the direction attached as Schedule "A" hereto (the "**Escrow Release Direction**"), signed by both the Purchaser and the Vendor, authorizing and directing the Escrow Agent to release the Funds to the applicable Party, as designated under Section 2.1(7) of the Share Purchase Agreement, and the Escrow Agent shall, within five (5) business days of the receipt by the Escrow Agent of such Escrow Release Direction, release such funds to such Party.
- 3.9 In the event that any action or other proceedings are commenced by any of the parties hereto to which one or both of the other parties hereto is a party relating to the Share Purchase Agreement or the Funds or if the Escrow Agent has not received an Escrow Release Direction within one year from the date hereof, the Escrow Agent shall be permitted to pay into court or to interplead the Funds pursuant to the applicable rules of procedure governing such action or proceedings and shall thereafter be released from any and all obligation to hold the Funds as Escrow Agent hereunder.

#### **4. Escrow Agent's Fees and Expenses**

- 4.1 The Vendor shall pay to the Escrow Agent (i) its fees for acting hereunder as Escrow Agent from time to time as and when incurred, and (ii) the Escrow Agent's out-of-pocket expenses, including without limitation reasonable legal fees and disbursements incurred as a result of consulting independent counsel, if necessary, as to its obligations hereunder, any fees and disbursements incurred in connection with the investing of the Funds and all applicable taxes thereon.

#### **5. Limitations on Duties and Liabilities of Escrow Agent**

- 5.1 The acceptance by the Escrow Agent of its duties and obligations under this agreement is subject to the following terms and conditions, which the parties to this agreement hereby agree shall govern with respect to the Escrow Agent's rights, duties, liabilities and immunities:
  - (a) the Escrow Agent shall not be liable or accountable for any loss or damage whatsoever, including, without limitation, loss of profit, to any person caused by the performance or failure to perform by it of its responsibilities under this agreement, save only to the extent that such loss or damage is attributable to the gross negligence or wilful misconduct of the Escrow Agent or to any action taken or omitted to be taken by the Escrow Agent in bad faith;

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- (b) the Escrow Agent shall have no duties except those which are expressly set forth herein and shall not be bound by any notice of a claim or a demand with respect thereto or any waiver, modification, amendment, termination or rescission of this agreement unless received by it in writing and signed by all of the parties hereto (or, in the case of a waiver, the party so waiving) other than the Escrow Agent and is in a form satisfactory to the Escrow Agent;
- (c) the Escrow Agent shall be protected in acting upon any certificate, written notice, request, waiver, consent, receipt, statutory declaration or other paper or document furnished to it and signed by one or both of the other parties hereto or on its or their behalf as herein provided not only as to its due execution and the validity and effectiveness of its provisions but also as to the truth and acceptability of any information therein contained which the Escrow Agent in good faith believes to be genuine in what it purports to be;
- (d) the Escrow Agent shall not be liable for or by reason of any statements of fact or recitals in this agreement and shall not be required to verify the same;
- (e) nothing herein contained shall impose any obligation on the Escrow Agent to see to or require evidence of the registration or filing or recording (or renewal thereof) of this agreement, or any instrument ancillary or supplemental thereto, or to procure any further, any other or additional instrument or further assurance;
- (f) in the exercise of its rights and duties hereunder, the Escrow Agent shall not be in any way responsible for the consequence of any breach on the part of a party hereto of any of their respective covenants herein contained or of any acts of the agents or servants of any of them;
- (g) the Escrow Agent shall retain the right not to act and shall not be held liable for refusing to act unless it has received clear and reasonable documentation which complies with the terms of this agreement. Such documentation must not require the exercise of any discretion or independent judgment;-
- (h) in the event of any disagreement arising regarding the terms of this agreement, the Escrow Agent shall be entitled at its option to refuse to comply with any or all demands whatsoever until the dispute is settled either by agreement amongst the various parties or by a court of competent jurisdiction;
- (i) the Escrow Agent may resign its agency and be discharged from all duties and obligations hereunder by giving to the Vendor and the Purchaser 30 days prior notice of its resignation, or such shorter period as such parties shall accept as sufficient; and
- (j) if the Escrow Agent resigns its agency in accordance herewith, the Purchaser and the Vendor shall have the right and obligation to appoint a succeeding escrow agent who, upon accepting such appointment, shall assume all of the obligations and responsibilities and shall be entitled to enjoy the benefits and rights of the Escrow Agent hereunder. If a successor escrow agent is appointed as herein



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provided, the Escrow Agent shall pay and deliver to such successor all funds, agreements and other documents then in its possession upon payment of its fees.

- 5.2 The rights and benefits held by and the indemnities granted in favour of the Escrow Agent set out in Sections 4, 5, 8 and 11 of this agreement shall continue indefinitely notwithstanding the appointment of a successor escrow agent pursuant to provisions of this paragraph.
- 5.3 No implied duties or obligations of the Escrow Agent shall be read into this agreement.
- 5.4 Payments made by the Escrow Agent hereunder shall be duly made if paid by trust cheque.

**6. Discharge of Escrow Agent**

- 6.1 The Escrow Agent shall be discharged from any further duty upon release of the monies contained in the Escrow Account in accordance with Article 3 of this agreement.

**7. Co-Operation of the Purchaser and the Vendor with Escrow Agent**

- 7.1 The Purchaser and the Vendor shall deliver to the Escrow Agent all documents and do or cause to be done all other things necessary to enable the Escrow Agent to comply with this agreement.

**8. Disclosure by Escrow Agent**

- 8.1 The Purchaser and the Vendor acknowledge that the Escrow Agent has, in the past, acted as counsel to the Vendor, is currently acting as counsel to the Vendor and may, in the future, act as counsel to the Vendor. The Purchaser and the Vendor further acknowledge their desire for the Escrow Agent to act in such capacity notwithstanding the disclosures set out in the first sentence of this Section 8. The Vendor and the Purchaser agree that in the event of a dispute under this agreement, the Escrow Agent shall have the right to deposit the Funds into a court of competent jurisdiction until such dispute is resolved to the satisfaction of such court.

**9. Notice**

- 9.1 Any notice required to be given hereunder shall be sufficiently given and delivered to the Escrow Agent if personally delivered, addressed to the Escrow Agent as set out below. Any notice, certificate or other writing required or permitted to be given hereunder (a "Notice") shall be sufficiently given and delivered to the party to whom it is given if personally delivered or mailed, by prepaid registered mail, addressed to such party as follows:

in the case of the Vendor:

P.O. Box 189  
43 Stewart Road  
Collingwood, ON L9Y 3Z5

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Attention: Clerk  
 Fax No.: (705) 445-2448

in the case of the Purchaser:

PowerStream Inc.  
 161 Cityview Boulevard  
 Vaughan, ON L4H 0A9  
 Attention: Dennis Nolan, Executive Vice-President,  
 Corporate Services and Secretary  
 Fax No.: (905) 532-4616

If to the Escrow Agent, to: Aird & Berlis LLP  
 Barristers & Solicitors  
 BCE Place  
 Suite 1800, Box 754  
 181 Bay Street  
 Toronto, Canada  
 M5J 2T9

Attention: Ron Clark  
 Telephone No.: (416) 865-7701  
 Telecopier No.: (416) 863-1515

or such other address as the party to whom a Notice is to be given shall have last notified in writing the other parties hereto of a change of address for the purposes of this provision. Any Notice mailed as aforesaid shall be deemed to have been given and received on the date that the Notice is signed for by the party to whom it is addressed or any employee or agent thereof. Any Notice personally delivered to the party to whom it is addressed shall be deemed to have been given and received on the day it is personally delivered, but if any such day falls on a weekend or statutory holiday in the City of Toronto, then the Notice shall be deemed to have been given and received on the business day next following such day. In the event of a postal disruption, a Notice must be personally delivered.

## 10. Amendment

10.1 This agreement shall not be amended, revoked or rescinded as to any of its terms and conditions except by agreement in writing signed by all of the parties hereto.

## 11. Indemnification of Escrow Agent

11.1 The Vendor agrees to indemnify and hold the Escrow Agent harmless against any and all losses, claims, suits, demands, costs and expenses that may be incurred by the Escrow Agent or made on the Escrow Agent by the Vendor, the Purchaser or any third party by reason of the Escrow Agent's compliance in good faith with the terms of this agreement, except claims, suits or demands arising from the, wilful default or gross negligence of the

Escrow Agent in the performance of its duties hereunder. In no event shall the Escrow Agent be liable to the Purchaser or the Vendor for any act which it may do or which it may omit to do with respect to this agreement, except in the case of gross negligence or wilful misconduct of the Escrow Agent.

**12. Binding Agreement - Not Assignable**

12.1 This agreement shall constitute a binding obligation and shall enure to the benefit of each of the parties hereto and their respective successors and assigns and shall not be assignable by any of them without the prior consent in writing of each of the other parties.

**13. Governing Laws**

13.1 This agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have executed and delivered these presents as of the date first above written.

**THE CORPORATION OF THE TOWN OF COLLINGWOOD**

By:

\_\_\_\_\_  
Name: Sandra Cooper

Title: Mayor

By:

\_\_\_\_\_  
Name: Sara Almas

Title: Clerk

**POWERSTREAM INC.**

By:

\_\_\_\_\_  
Name:

Title:

By:

\_\_\_\_\_  
Name:

Title:

**Schedule "A"**  
**Form of Escrow Release Direction**

11826758.5

**Schedule E**

**Additional Closing Dividends**

See attached.

## Schedule E – Calculation of Additional Closing Dividend

### Overview

This schedule outlines the calculation of the Additional Closing Dividend (and the Final Additional Closing Dividend Amount) that is payable to the Vendor as a result of the inclusion of the shares of the Corporation, Solutions and Energy as part of the Transaction. Collectively, the Corporation, Solutions and Energy are referred to in this Schedule E as the “**Companies**”. Collus is not included in these calculations.

The overall objective is for the Vendor to receive credit for any incremental net assets, other than the Corporation’s investment in the shares of Collus, Solutions and Energy, that remain in the Companies on the Closing Date, while ensuring that sufficient assets remain in the Companies to offset any outstanding liabilities. In particular, Solutions has a future employee benefits liability.

### Calculation

The Additional Closing Dividend will consist of two parts:

- a) A calculation of the Additional Closing Dividend Amount based on the Final 2011 Financial Statements of the Companies. This Additional Closing Dividend Amount will be calculated and declared as payable to the Vendor prior to the Closing Date but shall be paid on or after the Closing Date in accordance with Section 2.1(2)(c) of this Agreement.
- b) A true-up of the Additional Closing Dividend Amount based on the Closing Date Financial Statements of the Companies (prior to any dividend accrual). This true-up is intended to capture any net income (loss) earned by the Companies between December 31, 2011 and the Closing Date, and will be accrued as a dividend payable (receivable) to (from) the Vendor in the Closing Date Financial Statements of the Corporation (with a corresponding dividend (receivable) payable in the Closing Date Financial Statements of Solutions).

The Additional Closing Dividend Amount and the Final Additional Closing Dividend shall be calculated at December 31, 2011 and the Closing Date using the Final 2011 Financial Statements of the Companies and the Closing Date Financial Statements of the Companies, respectively. The following table presents a calculation of the Additional Closing Dividend Amount based on the 2010 Financial Statements for illustrative purposes.

		Note Book Value of shareholder's equity at Dec 31, 2010
The Corporation (non-consolidated)	\$	5,101,640
Less: Investment in shares of Subsidiaries		(5,101,540)
Add: Solutions		201,683
Add: Energy		100
Total = Additional Closing Dividend Amount	\$	201,883



**Schedule 4.1(1)(c)**

**Third Party Consents of Vendor, Corporation and Subsidiaries**

**1. Consents Required**

- (a) Financing Agreement between Ontario Infrastructure Projects Corporation and Collus Power Corp., dated March 10, 2010.
- (b) Shareholders Agreement between various local distribution company entities, including but not limited to Collus Power Corp, as well as Util-Assist Inc., Utility Collaborative Services Inc., dated November 20, 2009.
- (c) CIBC Credit Facility Agreement with Collus Power Corp., dated July 29, 2011, comprised of a revolving line of credit (\$500,000), standby letters of credit/letter of guarantee (\$2,417,179), and corporate Classic VISA (\$25,000).
- (d) CIBC Credit Facility Agreement with Collus Solutions Corp, dated July 29, 2011, comprised of a revolving line of credit (\$250,000).
- (e) Letter of comfort or discharge of registration from RCAP Leasing Inc. re PPSA File No. 670065453, Registration No. 20110520 1644 8077 2199, in respect of the following office equipment: (1) CC4483 Colour Multifunction System, (1) Contex SD4420 Stand, (1) Contex MFP Stand 44" SD Scanners, (1) Acer E5800, (1) Contex Touch Screen 17", (1) Canon Imageprograf IPF8300S.
- (f) Advanced Metering Infrastructure Sale and Services Agreement between Collus Power Corp. and Sensus Metering Systems Inc, dated 2009.
- (g) Ontario Energy Board MAAD filing.
- (h) Master Services Agreement between Kinetiq Canada Ltd., 437967 Ontario Limited, d.b.a. Savage Data System, and Collus Power Corp, dated September 10, 2009.
- (i) Membership Agreement between Collus Power Corp. and Cornerstone Hydro Electric Concepts Association Inc., dated March 7, 2005.

**2. Notices to be provided**

- (a) Small Utility Enterprise License Agreement (Agreement No. 2009 ELA 7885; Effective Date is December 14, 2009 (based on last signature)), between Environmental Systems Research Institute, Inc. (ESRI), Collus Power Corp. (as Licensee), and ESRI Canada Limited (as Distributor).

**Schedule 4.2(1)(c)**

**Third Party Consents of the Purchaser**

1. TD Credit Facility Agreement dated Dec 17, 2008, as amended Dec 3, 2009 and May 17, 2010 with PowerStream Inc. comprised of a committed revolving facility (\$75,000,000), a demand facility (\$25,000,000) a letter of guarantee facility ( \$15,000,000) and a committed term facility 5 year fixed rate of 5.08% (\$50,000,000), as further amended from time to time

**Schedule 5.2(9)**

**Real Property and Leased Property**

**1. The following properties are owned by Collus:**

- (a) Part of the North Half of Lot 43, Concession 8, formerly Township of Nottawasaga Town of Collingwood, County of Simcoe, designated as Part 2 on Plan 51R-26095 together with an easement over Pt 2, 51R-26084 as created by instrument No. 01311107 in favour of the Public Utilities Commission of the Town of Collingwood, being all of the PIN, known municipally as 180 Ontario Street, Collingwood L9Y 1M6.
- (b) Part of Lot 43, Concession 7 formerly Township of Nottawasaga Town of Collingwood, County of Simcoe, designated as Part 1 on Plan 51R-3895, known municipally as 495 Hume St., Collingwood, L9Y 4H8.
- (c) PIN 58255-0114(LT), being Lots 9 and 10, South Side of Water Street, Registered Plan 175 formerly Township of Nottawasaga Town of Collingwood, County of Simcoe.
- (d) Lot 48, Registered Plan 1611, Town of Collingwood, County of Simcoe, subject to an easement in favour of the Bell Telephone Company of Canada over the westerly 5 feet of the hereinbefore described lands which easement was registered in the Registry Office for the Registry Division of Simcoe (51) on October 14, 1971 as Instrument Number 372100. As in Instrument Number 373103. Known municipally as 440 Walnut St, Collingwood.
- (e) Parcel 1-1, Section M-75, being Lot 1, Plan M-75, Town of Collingwood, County of Simcoe, known municipally as 47 Sproule Ave., Collingwood, L9Y 4K8.
- (f) Part of Lot 47, Concession 10, formerly Township of Nottawasaga Town of Collingwood, County of Simcoe, designated as Part 1 on Plan 51R-13479, known municipally as 11383 Highway 26 W, Collingwood, L9Y 5E7.
- (g) Part Lot 41, Concession 7 formerly Township of Nottawasaga Town of Collingwood, County of Simcoe, designated as Parts 1, 2 and 3 on Plan 51R-19376, being all of the PIN, known municipally as 2 Sanford Fleming Dr, Collingwood, L9Y 4V9.
- (h) In the Town of Blue Mountains, County of Grey, Firstly: Part of Lot 31, Concession 9, in the Town of the Blue Mountains (formerly the Township of Collingwood), County of Grey, now designated as Part 1, Plan 16R-7556; Secondly: Part of Lots 35, 36, 37, 38 and 39, Southwest of King Street, in the Town of the Blue Mountains (formerly the Town of Thornbury), County of Grey now designated as Parts 1 and 2, Plan 16R-7557, known municipally as 95 King Street Thornbury, N0H 2P0 and 208330 Highway 26/ Russell Street, Thornbury N0H 2P0.

- (i) PIN 58235-0118LT, Part Lot 7 N/S of Quebec St., PL 103 Nottawasaga as in R0797216, Clearview, Stayner, known municipally as 229 Quebec Street, Stayner, L0M 1N0.
- (j) Minnesota St, Nottawasaga Con 8 Pt Lot 44 RP 51R34927 Part 9.
- (k) Plan 175 Pt Lots 9 and 10 RP 51R30684 Part 4, known municipally as 20 Mountain Rd, Collinwood, L9Y 0A1.
- (l) PIN 58290-0004 (LT), Pt N1/2 Lt 43 Con 8 Nottawasaga Pt 1 & 3, 51R26694 & Pt 2, 51R29853; Collingwood, known municipally as Ontario Street, Collingwood, Ontario. Subject to restrictive covenants registered on October 26, 2000 as Instrument No. RO1447147Z from Rogers Wireless Inc. to Donald Gallinger and David Chandler.
- (m) Superior Street, Stayner, L0M 1N0. Sub-station only.
- (n) Highway 26 W, Collingwood, L9Y 3E5. Sub-station only.
- (o) Maple Street, Collingwood, L9Y. Sub-station only.

2. **The following properties are rented by Collus:**

- (a) Land referenced in Shared Facilities Lease between The Public Utilities Commission of Collingwood ("Landlord") and Collus Power Corp. ("Tenant"), dated November 30, 2000, located on Part of Lot 43, Concession 10, Town of Collingwood (formerly the Township of Nottawasaga) County of Simcoe and shown as Parts 6 and 7 on Reference Plan 51R-17032 and shown as Parts 1 and 2 on Reference Plan 51R-26745. (expired December 31, 2001)
- (b) Land referenced in Shared Facilities Lease between The Public Utilities Commission of Collingwood ("Landlord") and Collus Power Corp. ("Tenant"), dated January 1, 2002, located on Part of Lot 43, Concession 10, Town of Collingwood (formerly the Township of Nottawasaga) County of Simcoe and shown as Parts 6 and 7 on Reference Plan 51R-17032 and shown as Parts 1 and 2 on Reference Plan 51R-26745. (expired December 31, 2002)
- (c) Land referenced in Shared Facilities Lease between The Public Utilities Commission of Collingwood ("Landlord") and Collus Power Corp. ("Tenant"), dated January 1, 2003, located on Part of Lot 43, Concession 10, Town of Collingwood (formerly the Township of Nottawasaga) County of Simcoe and shown as Parts 6 and 7 on Reference Plan 51R-17032 and shown as Parts 1 and 2 on Reference Plan 51R-26745. (expired December 31, 2003), as amended by amending agreements dated November 4, 2004, December 14, 2005, December 20, 2006, December 19, 2007, December 16, 2009, January 31, 2011. Please note that there is no formal renewal in place for 2012, however, the parties to this agreement have continued the arrangement per the Shared Facilities Lease.

**Schedule 5.2(10)**

**Intellectual Property**

**1. Agreements with technology licensing provisions**

- (a) Microsoft Dynamics service plan, dated October 30, 2007.
- (b) Microsoft Great Plains Standard Software, dated October 13, 2005, with Collingwood Public Utilities Service Board. Software purchased by CPU and used by Collus and Town, pursuant to Computer Rental Agreement referenced in Schedule 5.2(21).
- (c) Small Utility Enterprise License Agreement (Agreement No. 2009 ELA 7885; Effective Date is December 14, 2009 (based on last signature)), between Environmental Systems Research Institute, Inc. (ESRI), Collus Power Corp. (as Licensee), and ESRI Canada Limited (as Distributor).
- (d) Account Viewer Usage Agreement between The SPI Group Inc. and Collus Power Corp., dated August 6, 2008.
- (e) Software Licence, Implementation and Support and Maintenance Agreement between N. Harris Computer Corporation and 1713637 Ontario Inc. (of which Collus Power is a shareholder), dated September 1, 2006.
- (f) End User License Agreement between Diamond Municipal Solutions Inc. and Collingwood Public Utilities Service Board, dated January 20, 2006. Software purchased by and licensed to CPU and used by Collus and Town, pursuant to Computer Rental Agreement.
- (g) Advanced Metering Infrastructure Sale and Services Agreement between Collus Power Corp. and Sensus Metering Systems Inc, dated 2009.
- (h) Application Service Provider Agreement between Utility Collaborative Services Inc. (of which Collus Power is a shareholder) and Util-Assist Inc., dated January 1, 2010.
- (i) Master Services Agreement between Kinetiq Canada Ltd., 437967 Ontario Limited, d.b.a. Savage Data System, and Collus Power Corp., dated September 10, 2009.
- (j) Utilismart Customer Agreement, between Emera Incorporated and Cornerstone Hydro Electric Concepts Association Inc., term between November 1, 2001 and November 1, 2004 (initial term). There is no new agreement, but the terms from the old agreement are still followed.

2. **Other Intellectual Property**

- (a) Unregistered logos of Collingwood Utility Services Corp. and Collus Power Corp., designed in-house and owned by Collingwood Utility Services Corp. and Collus Power Corp., respectively.
- (b) Domain names www.collus.com and www.colluspower.com registered to the Corporation.

**Schedule 5.2(11)**

**Contracts and Commitments**

**1. Employment or consulting Contract or any other written Contract with an officer, employee or consultant**

- (a) IFRS conversion services agreement between BDO Dunwoody LLP and Collingwood Utility Services Corp., dated July 24, 2009. Please note that the agreement and work contemplated thereunder will be complete as of 2012. Discussions are ongoing to determine if new works and a corresponding new agreement is required.
- (b) IFRS conversion services agreement between BDO Dunwoody LLP and Collus Power Corp., dated February 18, 2010. Please note that the agreement and work contemplated thereunder will be complete as of 2012. Discussions are ongoing to determine if new works and a corresponding new agreement is required
- (c) Consulting Services Agreement re Sync Operator Service Agreement between Util-Assist Inc. and Collus Power Corp, dated August 4, 2011.
- (d) MEARIE Employee and Labour Relations Service Subscriber Agreement between MEARIE Management Inc. and Collus Power Corp., dated December 13, 2011.

**2. Agreements limiting freedom to engage in any line of business or to compete**

- (a) Shareholders Agreement between various local distribution company entities, including Collus Power Corp, Util-Assist Inc., Utility Collaborative Services Inc., dated November 20, 2009.
- (b) Master Services Agreement between Kinetiq Canada Ltd., 437967 Ontario Limited, d.b.a. Savage Data System, and Collus Power Corp, dated September 10, 2009.
- (c) Utility-Specific Load Shape Agreement between Hydro One Networks Inc. and Collus Power Corp., dated July 24, 2006.
- (d) Mutual Non-Disclosure Agreement between The Corporation of the Town of Collingwood, Collus, and PowerStream Inc, September 19, 2011.

**3. Any other Material Contract**

- (a) See Service Agreements listed in Schedule 5.2(21);
- (b) See Intellectual Property licensing agreements listed in Schedule 5.2(10).
- (c) See Shared Services Agreements listed in Schedule 5.2(9).

- (d) Agreement between Collus and Burman Energy Consultants Group Inc., dated April 28, 2011 and Goods and Services Agreement, dated April 28, 2011, between Collus Power Corp. and Burman Energy Consultants Group Inc. re Delivery Agent Services for Direct Install Lighting and Water Heating Initiatives (formerly the Power Savings Blitz Program).
- (e) Agreement between Collus and Burman Energy Consultants Group Inc., dated June 9, 2011 and Goods and Services Agreement, dated June 9, 2011, between Collus Power Corp. and Burman Energy Consultants Group Inc. re Delivery Agent Services for Provincial Equipment Replacement Incentive – Schedule C2 (formerly the Power Savings Blitz Program).
- (f) Utility-Specific Load Shape Agreement between Hydro One Networks Inc. and Collus Power Corp., dated July 24, 2006.
- (g) Application Service Provider Agreement between Utility Collaborative Services Inc. and Util-Assist Inc., dated January 1, 2010
- (h) Peterborough Utilities Inc. MSP#1002 Meter Service Provider Agreement between Collus Power Corporation and MSP#1002 – Peterborough Utilities Inc., dated December 4, 2009.
- (i) Membership Agreement between Collus Power Corp. and Cornerstone Hydro Electric Concepts Association Inc., dated March 7, 2005.
- (j) Advanced Metering Infrastructure Sale and Services Agreement between Collus Power Corp. and Sensus Metering Systems Inc., dated 2009.
- (k) Street Lighting Agreement – Collus Solutions Corp. and The Corporation of the Township of Clearview – January 1, 2004. Please note that this agreement was not signed by the parties thereto have treated it as being in place and are in compliance with the same.
- (l) Street Lighting Agreement – Collus Solutions Corp. and The Corporation of the Town of the Blue Mountains – January 1, 2004. Please note that this agreement was not signed by the parties thereto have treated it as being in place and are in compliance with the same.
- (m) Contract Service Agreement, CSA-001.2001, dated April 23, 2002 (as amended April 2, 2002 [*sic*] between Collus Power Corp and Cornerstone Hydro Electric Concepts Association Inc.
- (n) Customer Agreement, Contract No. CHEC02-SMONT-01-11-08 between Utilismart Corporation and Cornerstone Hydro Electric Concepts Association Inc. and its member utilities (including Collus Power); re wholesale settlement verification. Initial Term November 1, 2008 to October 31, 2010. Still in force.



- (o) Agreements to acquire Distribution Assets, assume obligations to maintain, repair, and replace Distribution Assets, and to keep Corporation informed of the state of the Distribution Assets and issues related to works on these assets, between Collus Power Corp and: Simcoe Condominium Corporations No. 102, 107, 113, 122, 126, 136, 194, 199, 211, 214, 218, 231, 238, 245, 254, 261, and Lighthouse Point Yacht and Tennis Club, dated January 25, 2003; Simcoe Condominium Corporation No. 5, dated December 12, 2003; Simcoe Condominium Corporation No. 21, dated January 2, 2003; Simcoe Condominium Corporation No. 24, dated December 11, 2002; Simcoe Condominium Corporation No. 30, dated December 7, 2002; Simcoe Condominium Corporation No. 31, dated December 7, 2002; Simcoe Condominium Corporation No. 34, dated December 21, 2002; Simcoe Condominium Corporation No. 36, dated January 10, 2003; Simcoe Condominium Corporation No. 38, dated December 5, 2003; Simcoe Condominium Corporation No. 40, dated December 23, 2003; Simcoe Condominium Corporation No. 42, dated April 8, 2004; Simcoe Condominium Corporation No. 45, dated December 11, 2002; Simcoe Condominium Corporation No. 48, dated December 7, 2002; Simcoe Condominium Corporation No. 50, dated February 23, 2002; Simcoe Condominium Corporation No. 52, dated February 8, 2002; Simcoe Condominium Corporation No. 53, dated April 8, 2004; Simcoe Condominium Corporation No. 55, dated December 9, 2002; Simcoe Condominium Corporation No. 56, dated February 11, 2002; Simcoe Condominium Corporation No. 57, dated April 25, 2003; Simcoe Condominium Corporation No. 59, dated February 9, 2002; Simcoe Condominium Corporation No. 63, dated May 12, 2003; Simcoe Condominium Corporation No. 64, dated February 8, 2002; Simcoe Condominium Corporation No. 67, dated December 7, 2002; Simcoe Condominium Corporation No. 78, dated April 8, 2004; Simcoe Condominium Corporation No. 79, dated January 8, 2003; Simcoe Condominium Corporation No. 80, dated January 27, 2004; Simcoe Condominium Corporation No. 91, dated April 5, 2003; Simcoe Condominium Corporation No. 92, dated December 7, 2002; Simcoe Condominium Corporation No. 94, dated May 3, 2002; Simcoe Condominium Corporation No. 114, dated May 3, 2002; Simcoe Condominium Corporation No. 116, dated February 16, 2002; Simcoe Condominium Corporation No. 124, dated December 13, 2002; Simcoe Condominium Corporation No. 125, dated January 26, 2004; Simcoe Condominium Corporation No. 144, dated May 3, 2002; Simcoe Condominium Corporation No. 145, dated April 15, 2003; Simcoe Condominium Corporation No. 146, dated December 7, 2002; Simcoe Condominium Corporation No. 167, dated February 18, 2003; Simcoe Condominium Corporation No. 207, dated April 30, 2002; Simcoe Condominium Corporation No. 244, dated November 21, 2003; Simcoe Condominium Corporation No. 86, dated November 21, 2003; Simcoe Condominium Corporation No. 130, dated November 21, 2003; Simcoe Condominium Corporation No. 188, dated November 21, 2003; Simcoe Condominium Corporation No. 219, dated November 21, 2003; Simcoe Condominium Corporation No. 220, dated November 21, 2003; Simcoe Condominium Corporation No. 230, dated November 21, 2003; Simcoe Condominium Corporation No. 237, dated November 21, 2003; Simcoe

Condominium Corporation No. 239, dated November 21, 2003; Simcoe Condominium Corporation No. 240, dated November 21, 2003; Simcoe Condominium Corporation No. 247, dated November 21, 2003; Simcoe Condominium Corporation No. 255, dated November 21, 2003; Simcoe Condominium Corporation No. 258, dated November 21, 2003; Simcoe Condominium Corporation No. 200, dated November 21, 2003.

- (p) Telecommunications Site Agreement between SCBN Telecommunications Inc. and Collus Power Corp., dated as of April 1, 2002.
- (q) Telecommunications Site Agreement between SCBN Telecommunications Inc. and Collus Power Corp., dated June 1, 2002.
- (r) Agreement for Licensed Attachment to Collus Power Corp. by Atria Networks LP, dated April 17, 2009
- (s) Model Agreement for Joint Use of Poles by Collus Power Corp. and Bell Canada, March 27, 2009

4. **Indebtedness in respect of borrowed money or guarantees**

- (a) Financing Agreement between Ontario Infrastructure Projects Corporation and Collus Power Corp., dated March 10, 2010.
- (b) Guarantee Agreement between OIPC and Collingwood Utility Services Corp., dated March 10, 2010.
- (c) General Security Agreement between OIPC and Collus Power Corp., dated March 10, 2010.
- (d) 15 year serial debenture no. 04-01-2010-01, in the amount of \$3,000,000 with Collus Power as Borrower April 15, 2010.
- (e) CIBC Credit Facility Agreement with Collus Power Corp., dated July 29, 2011, comprised of a revolving line of credit (\$500,000), standby letters of credit/letter of guarantee (\$2,417,179), and corporate Classic VISA (\$25,000)
- (f) CIBC Credit Facility Agreement with Collus Solutions Corp, dated July 29, 2011, comprised of a revolving line of credit (\$250,000)
- (g) Letter of Credit issued by CIBC No. SBGT721839, from Collus Power Corp. in favour of IESO and amendments no. 1-4.
- (h) Promissory Note from Collus to the Vendor dated October 31, 2000, in the amount of \$1,710,169.
- (i) Amount of \$13,201 owed to Collus by Utility Collaborative Services Inc. as of December 31, 2010 (shareholder, related party transaction) One share issued (of

10 total). Please note that this amount will change for 2012 and will be confirmed once known.

- (j) Guarantees from CUS for Solutions and Power credit facilities listed in paragraphs (e) and (f) above.
- (k) Agreement dated April 23, 2002 between Collus Power Corp, Emera Incorporated, and Cornerstone Hydro Electric Concepts Association Inc.

**Schedule 5.2(12)****Employee Plans**

1. See Collective Agreement referenced in Schedule 5.2(13).
2. The MEARIE Group Employee Benefit Program. Employee Benefit Booklet for Collingwood Utility Services (and Subsidiaries), effective Jan 1 2012.
3. Ontario Municipal Employees Retirement System (OMERS) for Collus Power and Collus Solutions (November 23, 2000).

**Schedule 5.2(13)****Collective Agreement**

Collective Agreement between Collus Power Corp. and Collingwood Public Utilities of the Town of Collingwood, and It's Employees Through Local #636 of the International Brotherhood of Electrical Workers, dated January 14, 2011 covering the period from September 1, 2010 to August 31, 2013.

**Schedule 5.2(14)**

**Employees**

See attached.

**Schedule 5.2(15)**

**Insurance**

**1. Policies**

- (a) The MEARIE Group, Comprehensive Liability Policy, Policy No. L2012COLL1, covering Jan 1, 2012 to Jan 1, 2013, with insured as CUS and Additional named insured Collus, Solutions, Energy, Public Utilities Services Board.
- (b) The MEARIE Group, Property Program Policy, Policy No. P2012COLL1, covering from Jan 1, 2012 to Jan 1 2013, insured is CUS and Subsidiaries.
- (c) The MEARIE Group, Vehicle Program, Certificate of Automobile Insurance, Policy No. V2012COLL1 for Collus Power dating from Jan 1 2012 to Jan 1 2013. Additional Named Insured: Collingwood Public Utility Service Board.
- (d) Chartis Insurance Company of Canada, Policy No. RMGL9895550 and BE6849066, Named Insured is Rogers Communications Partnership and additional insured is Collus Power Corp., dating from September 1, 2011 to June 1, 2012. Relating to the Agreement for Licensed Attachment entered into between Collus Power Corp. and Atria Networks LP.

**2. Claims**

Nil.

**Schedule 5.2(16)**

**Environmental**

Nil.



**Schedule 5.2(17)**

**Litigation**

Nil.

**Schedule 5.2(18)**

**Taxes**

Nil.

**Schedule 5.2(20)**

**2010 Financial Statements**

See attached.

# **COLLINGWOOD UTILITY SERVICES CORP.**

**CONSOLIDATED FINANCIAL STATEMENTS  
DECEMBER 31, 2010**

## **CONTENTS**

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**GAVILLER & COMPANY LLP**  
CHARTERED ACCOUNTANTS

**INDEPENDENT AUDITORS' REPORT**

To the Shareholder of **Collingwood Utility Services Corp.**:

**Report on the Consolidated Financial Statements**

We have audited the accompanying financial statements of **Collingwood Utility Services Corp.**, which comprise the consolidated balance sheet as at December 31, 2010, and the consolidated income and retained income statement and consolidated cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information.

**Management's Responsibility for the Consolidated Financial Statements**

Management is responsible for the preparation and fair presentation of these consolidated financial statements in accordance with Canadian generally accepted accounting principles and for such internal control as management determines is necessary to enable the preparation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these consolidated financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of **Collingwood Utility Services Corp.** as at December 31, 2010, and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

*Gaviller & Company LLP*

Licensed Public Accountants

Collingwood, Ontario

May 13, 2011

# COLLINGWOOD UTILITY SERVICES CORP.

## CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31

	2010	2009
	\$	\$
<b>Assets</b>		
<b>Current</b>		
Cash	3,131,790	1,572,425
Accounts receivable (Note 9)	4,969,831	3,735,946
Unbilled revenue	3,343,566	3,024,852
Taxes recoverable	53,413	104,404
Prepaid expenses	130,846	74,051
Inventory	317,756	297,789
	11,947,202	8,809,467
<b>Property, plant and equipment</b>		
Lands	90,439	90,439
Buildings	494,142	255,668
Distribution stations	5,219,952	3,857,578
Distribution lines	20,475,695	19,596,227
Distribution transformers	5,184,349	5,020,605
Distribution meters	1,767,391	1,565,562
Load control	1,521,439	1,459,235
Other	1,991,042	2,838,992
Contributions in aid of construction (Note 7)	(9,636,769)	(9,354,806)
	27,107,680	25,329,500
Less accumulated depreciation	(14,344,099)	(13,405,295)
	12,763,581	11,924,205
<b>Other</b>		
Goodwill	276,704	276,704
Intangible assets (net of accumulated amortization of \$232,256 (2009 -\$130,189))	278,072	338,117
Investment in Utility Collaborative Services Inc. - at cost	100	100
Future taxes recoverable	243,823	255,837
	798,699	870,758
	25,509,482	21,604,430

Approved by directors:

\_\_\_\_\_ Director

\_\_\_\_\_ Director

See accompanying notes to the financial statements

# COLLINGWOOD UTILITY SERVICES CORP.

## CONSOLIDATED BALANCE SHEET AS AT DECEMBER 31

	2010	2009
	\$	\$
<b>Liabilities</b>		
Current		
Accounts payable and accruals (Notes 7 and 9)	7,417,305	7,342,070
Customer deposits	430,736	355,081
Current portion of long-term (Note 10)	200,000	-
	<b>8,048,041</b>	7,697,151
Long-term (Note 10)	4,410,170	1,710,170
Employee future benefits (Note 12)	655,332	595,475
Other (Note 11)	1,411,987	1,005,314
<b>Total liabilities</b>	<b>14,525,530</b>	11,008,110
<b>Shareholder's equity</b>		
Capital stock		
Authorized		
Unlimited common shares		
Issued		
5,101,640 common shares	5,101,640	5,101,640
Miscellaneous paid in capital	2,966,014	2,966,014
Retained income	2,916,298	2,528,666
<b>Total shareholder's equity</b>	<b>10,983,952</b>	10,596,320
	<b>25,509,482</b>	21,604,430

See accompanying notes to the financial statements

# COLLINGWOOD UTILITY SERVICES CORP.

## CONSOLIDATED INCOME AND RETAINED INCOME STATEMENT FOR THE YEAR ENDED DECEMBER 31

	2010	2009
	\$	\$
Revenues		
Sale of power	25,971,849	24,064,556
Distribution services	5,437,389	5,126,519
	<b>31,409,238</b>	29,191,075
Cost of power		
Power purchased	25,971,849	24,064,556
Distribution income (17.3%; 2009 - 17.6%)	5,437,389	5,126,519
Other operating income (Note 9)		
Accounting and administrative services	881,803	811,881
Miscellaneous	629,785	557,971
	<b>6,948,977</b>	6,496,371
Operating expenses		
Distribution and transmission	1,697,352	1,732,891
Billing and collecting	913,832	631,522
General administration (Notes 9 and 10)	2,893,320	2,593,799
Amortization	967,205	1,004,161
	<b>6,471,709</b>	5,962,373
Net income before taxes	477,268	533,998
Provision for (recovery) of taxes		
Current	77,622	110,755
Future	12,014	(47,493)
	<b>89,636</b>	63,262
<b>Net income for the year</b>	<b>387,632</b>	470,736
Retained income, beginning of year	2,528,666	2,057,930
<b>Retained income, end of year</b>	<b>2,916,298</b>	2,528,666

See accompanying notes to the financial statements



# COLLINGWOOD UTILITY SERVICES CORP.

## CONSOLIDATED STATEMENT OF CASH FLOW FOR THE YEAR ENDED DECEMBER 31

	2010	2009
	\$	\$
<b>Cash flows from (for):</b>		
<b>Operating activities</b>		
Net income for the year	387,632	470,736
Items not requiring funds		
Amortization	1,150,939	1,112,226
Future taxes	12,014	(47,493)
Gain on disposition of property, plant and equipment	(8,852)	-
	<b>1,541,733</b>	<b>1,535,469</b>
Changes in:		
Accounts receivable	(1,290,680)	382,845
Unbilled revenue	(318,714)	445,532
Inventory	(19,967)	(42,658)
Accounts payable and accruals	75,235	(1,475,224)
Income taxes	50,991	84,752
Customer deposits	75,655	(191)
Employee future benefits	59,857	56,411
Other liabilities	406,673	(2,709,369)
	<b>580,783</b>	<b>(1,722,433)</b>
<b>Investing activities</b>		
Acquisition of property, plant and equipment	(1,930,270)	(980,224)
Investment in Utility Collaborative Services Inc.	-	(100)
Proceeds from disposal of property, plant and equipment	8,852	-
	<b>(1,921,418)</b>	<b>(980,324)</b>
<b>Financing activities</b>		
Repayment of long-term liabilities	(100,000)	(1,117,353)
Issuance of long-term liabilities	3,000,000	-
	<b>2,900,000</b>	<b>(1,117,353)</b>
Change in cash	1,559,365	(3,820,110)
Cash position, beginning of year	1,572,425	5,392,535
<b>Cash position, end of year</b>	<b>3,131,790</b>	<b>1,572,425</b>

See accompanying notes to the financial statements

# COLLINGWOOD UTILITY SERVICES CORP.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 1. Significant accounting policies

The financial statements of the corporation are the representations of management. Since precise determination of many assets and liabilities is dependent upon future events, the preparation of periodic financial statements necessarily involves the use of estimates and approximations. These have been made using careful judgements based on available information. The most significant estimates are included in unbilled revenue and economic evaluation. The financial statements have, in the opinion of management, been properly prepared within the framework of the accounting policies summarized below.

- (a) The financial statements of the company are prepared in accordance with Canadian generally accepted accounting principles ("GAAP"), including accounting principles prescribed by the Ontario Energy Board (OEB) through the accounting procedures handbook and directives.
- (b) The company's distribution of electricity is subject to rate regulation by the OEB. This rate regulation results in the company accounting for specific transactions differently than it would if it was not rate-regulated. The differences in accounting treatment give rise to regulatory assets or liabilities. These balances will be recovered from or returned to customers by increases or decreases to rates in the future.

The electricity rates charged by the company are approved on an annual basis using performance-based regulation. For the rate year ending April 30, 2010, the company was authorized to earn 8.01% on equity and 6.25% on debt with a deemed debt to equity ratio of 1:0.89.

- (c) The company recognizes revenue on an accrual basis, which includes unbilled revenue, which is an estimate of electricity consumed by customers to the end of year but not yet billed by the company. Revenue from accounting and administrative services provided are recognized at the time in which the services were provided.
- (d) The financial statements of the company's subsidiaries, COLLUS Power Corp. , COLLUS Solutions Corp. and COLLUS Energy Corp. have been consolidated. All inter-company transactions have been eliminated.
- (e) Property, plant and equipment are stated at cost. Contributions received in aid of construction of property, plant and equipment are capitalized and amortized at the same rate as the related asset. Property, plant and equipment are amortized over their estimated useful lives, using the straight-line method. Assets constructed by others and donated to the company are recorded at cost to the developer. Amortization rates are 4% except as follows:

Buildings	2%
Distribution stations	3.33%
Other capital assets	6.67% to 20%

- (f) Deferred charges - service area expansion costs are being amortized on a straight-line basis over twenty-five years.
- (g) Economic evaluation is an estimate of amounts due to subdivision developers in the future as repayment for the developers installation of hydro infrastructure.

# COLLINGWOOD UTILITY SERVICES CORP.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 1. Significant accounting policies (continued)

- (h) Taxes are calculated using the liability method of tax allocation accounting. Temporary differences arising from the difference between the tax basis of an asset or liability and its carrying amount on the balance sheet are used to calculate future tax liabilities or assets. Future tax liabilities or assets are calculated using tax rates anticipated to apply in the periods that the temporary differences are expected to reverse.
- (i) The company's inventory typically consists of poles and wire, unless purchased for specific capital projects in process or as spare units. Items for specific capital projects, spare transformers and meters are recorded as property, plant and equipment. The company's inventory is valued using the moving average cost method and is recorded at the lower of cost and net realizable value.
- (j) The company has adopted Canadian Institute of Chartered Accountants (CICA) Handbook Section 3861 - "Financial Instruments - Disclosure and Presentation" which establishes the requirement of disclosure of risks associated with financial instruments and the management of those risks.
- (k) Intangible assets

Intangible assets are externally acquired and are stated at cost. Amortization is provided on a straight-line basis over their estimated useful service lives at the following annual rates:

Computer software	20%
-------------------	-----

### 2. Tax status

The company is exempt from income tax under section 149 of the Income Tax Act. The company is required to make payments in lieu of tax calculated on the same basis as the Income Tax Act.

### 3. Financial instruments

The company's financial instruments consist of cash, accounts receivable, unbilled revenue, taxes recoverable, accounts payable and accruals, customer deposits and long-term liabilities. It is management's opinion that the company is not exposed to significant interest, currency or credit risks arising from these financial instruments. Fair market value does not vary significantly from recorded value.

### 4. Line of credit

The company has two revolving lines of credit with CIBC with a combined credit limit of \$750,000. The interest rates for both are set at prime minus 0.75% per annum. During 2010 the company did not draw on either line of credit.

# COLLINGWOOD UTILITY SERVICES CORP.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 5. Future Accounting Pronouncements

The Accounting Standards Board has decided that rate regulated publicly accountable enterprises will be required to adopt International Financial Reporting Standards (IFRS) in place of Canadian GAAP for annual reporting purposes for fiscal years beginning on or after January 1, 2012. The transition period is expected to begin for fiscal years beginning on or after January 1, 2011. The impact of these changes cannot be estimated at this time.

Phase 1 of the company's IFRS implementation was complete as of October 2009. Phase 1 identified the company's needs with regard to the new standards and set out recommendations to meet those needs. Phase 2 was still in progress as of the 2010 audit report date, which includes reclassifying property, plant, and equipment to comply with IFRS.

### 6. Supplemental cash flow information

Cash receipts (payments) were made as follows:

	2010	2009
	\$	\$
Interest received	51,253	70,417
Interest paid	(221,217)	(179,149)
Taxes refunded	104,403	190,118
Taxes paid	(130,950)	(216,120)

### 7. Contributions in aid of construction

Under the terms of the Distribution System Code, the corporation cannot charge a developer more than the difference between the present value of the projected capital costs and on-going maintenance costs for the equipment and the present value of the projected revenue for distribution services provided by those facilities. These amounts are determined by an economic evaluation study of the project. The corporation estimates that it will return \$365,610 (2009 - \$365,610). The liability is included in accounts payable and accruals. The balance of \$9,636,769 (2009 - \$9,354,806) is recorded as a reduction of the cost of property, plant and equipment.

### 8. Property, plant and equipment

Effective in 2010 and under the direction of the OEB, the company had the option of moving stranded meter costs into the regulatory asset accounts or leave them in property, plant, and equipment. The company decided to keep them in property, plant, and equipment and continue to amortize the stranded meter costs. The balance of stranded meters in property, plant, and equipment is \$1,529,891 and the accumulated amortization is \$909,545 (2009 - \$863,275).

# COLLINGWOOD UTILITY SERVICES CORP.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 9. Related party transactions

Collingwood Public Utilities Commission and the company are controlled by the council of the Town of Collingwood.

Related party transactions are recorded at their exchange value and include the following:

	2010	2009
	\$	\$
Amounts receivable from Collingwood Public Utilities Service Board	171,234	162,324
Amounts receivable from the Town of Collingwood	91,413	75,536
Amounts payable to the Collingwood Public Utilities Service Board	(93,479)	(496,809)
Amounts payable to the Town of Collingwood	(1,831,697)	(412,995)
Revenues include amounts charged to the following parties:		
Town of Collingwood	68,461	62,517
Collingwood Public Utilities Service Board	881,803	811,881
Expenses include information technology assistance to the Town of Collingwood	21,631	20,029
The company is leasing its operations centre and computers from the Collingwood Public Utilities Service Board. The lease has a one year term and is renewable annually. These costs are included in general administration expense.	317,000	317,000

### 10. Long-term liabilities

Long-term liabilities consist of the following:

	2010	2009
	\$	\$
4.67% loan payable to the Ontario Infrastructure Projects Corporation, secured by a General Security Agreement over all of the assets of the company. Payments are to be made semi-annually to April 15, 2025	2,900,000	-
7.25% note payable to Town of Collingwood, no set terms of repayment	1,710,170	1,710,170
	4,610,170	1,710,170
Current portion of long-term liabilities	(200,000)	-
	4,410,170	1,710,170

Included in general administration expense is \$176,802 (2009 - \$129,020) of interest on long-term liabilities.

The corporation is contingently liable for a letter of credit in the amount of \$2,046,656 (2009 - \$1,631,702) to meet the prudential requirements of the Independent Electricity System Operator.

# COLLINGWOOD UTILITY SERVICES CORP.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 11. Other assets (liabilities)

Other assets (liabilities) consist of the following:

	2010	2009
	\$	\$
Deferred charges-service area expansion (net of \$98,899 accumulated amortization, 2009 - \$90,744)	106,015	114,170
<b>Regulatory assets</b>		
Other regulatory assets	225,179	66,530
Smart meter variance	1,838,379	1,927,304
<b>Regulatory liabilities</b>		
Purchased power cost variance	(938,916)	(2,562,776)
Regulatory recoveries	(2,562,854)	(507,194)
Other regulatory liabilities	(79,790)	(43,348)
<b>Total regulatory liabilities</b>	<b>(3,581,560)</b>	<b>(3,113,318)</b>
<b>Net liability</b>	<b>(1,411,987)</b>	<b>(1,005,314)</b>

Other regulatory assets consist of Hydro One incremental capital and pension costs from OMERS not recovered in rates. This account includes annual carrying charges accrued at the OEB quarterly interest rate in effect.

In 2010 the OEB approved the disposition of power variances from December 31, 2008. The liability is being paid back through a reduction of customer's monthly billings over a period of three years, beginning in May 2010.

The purchased power cost variance represents variances in the purchase and sale of electricity which will be recovered from or returned to customers by increases or decreases to rates in the future. Purchased power cost variance includes annual carrying charges accrued at the OEB quarterly interest rate in effect.

The smart meters regulatory asset account relates to the Province of Ontario's decision to install smart meters throughout Ontario by 2011. The company launched its project shortly following the Province of Ontario's announcement in 2006. As at December 31, 2010, the company had installed approximately 15,000 smart meters. The company is currently authorized to collect \$2.00 per residential customer per month. Carrying charges are accrued on this account for 2007 and later years at the OEB quarterly interest rate in effect. As at December 31, 2010, smart meter capital expenditures totaled \$2,414,022 (2009 - \$2,257,264) which is offset by revenues of \$575,644 (2009 - \$262,021) and accumulated amortization of \$215,072 (2009 - \$67,939). In the current year smart meter accumulated amortization was offset by a contra account per OEB regulation.

# COLLINGWOOD UTILITY SERVICES CORP.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 12. Employee future benefits

The employees of Collingwood Utility Services Corp. participate in the Ontario Municipal Employees Retirement System ("OMERS"). Although the plan has a defined retirement benefit for employees, the related obligation of the corporation cannot be identified. The OMERS plan has several unrelated participating municipalities and costs are not specifically attributed to each participant. Amounts paid to OMERS during the year totaled \$216,202 (2009 - \$227,922).

In addition, Collingwood Utility Services Corp. pays certain benefits on behalf of its retired employees. The corporation recognizes these post-retirement costs in the period in which the employees rendered the services. The accrued benefit obligation at December 31, 2010 of \$655,332 and the net periodic benefit cost for 2010 was determined by actuarial valuations using discount rates of 6.0% and was adjusted by management based on new information available. Actuarial valuations will be prepared every second year or when there are significant changes to the workforce.

Information about the company's defined benefit plan is as follows:

	2010	2009
	\$	\$
<b>Accrued benefit obligation</b>		
Balance at the beginning of period	595,475	539,064
Current service cost for the period	23,018	21,715
Interest cost for the period	38,815	35,914
Actuarial loss	27,471	30,014
Prior period cost	6,434	12,868
Benefits paid for the period	(10,953)	(10,195)
Projected accrued benefit obligation at end of period as determined by actuarial valuation.	680,260	629,380
Unamortized actuarial loss	(24,928)	(27,471)
Unamortized prior service cost	-	(6,434)
<b>Balance at end of period</b>	<b>655,332</b>	<b>595,475</b>
<b>Components of net periodic benefit cost</b>		
Current service cost for the period	23,018	21,715
Interest cost for the period	38,815	35,914
Amortization of actuarial losses	2,543	2,543
Amortization of prior service cost	6,434	6,433
<b>Net periodic benefit cost</b>	<b>70,810</b>	<b>66,605</b>

# COLLINGWOOD UTILITY SERVICES CORP.

## NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 12. Employee future benefits (continued)

The main actuarial assumptions employed for the valuations are as follows:

(a) General inflation

Future general inflation levels, as measured by changes in the Consumer Price Index ("CPI"), were assumed at 2.0% in 2010 and thereafter.

(b) Interest (discount) rate

The obligation as at December 31, 2010, of the present value of future liabilities was determined using a discount rate of 6.0%. This corresponds to the assumed CPI rate plus an assumed real rate of return of 4.0%.

(c) Salary levels

Future general salary and wage levels were assumed to increase at 3.3% per annum.

(d) Medical costs

Medical costs were assumed to increase at 9.0% in 2010 graded down 0.67% a year until 2015 after which the rate is assumed to increase 5.0% annually.

(e) Dental costs

Dental costs were assumed to increase at 5.0% in 2010 and thereafter.

### 13. Capital disclosures

The company's main objectives when managing capital are to:

- (a) Ensure ongoing access to funds that will allow the ongoing operation of the service company.
- (b) Ensure ongoing access to funding to maintain and improve the electricity distribution system and to ensure that capital needs are met.
- (c) Ensure compliance with covenants related to its credit facilities and the Town of Collingwood promissory note.
- (d) Ensure that the capital structure is such that the debt to equity structure deemed by the OEB is not exceeded.

As at December 31, 2010, the company's definition of capital includes shareholder's equity and long-term debt. There have been no changes in the Company's approach to capital management during the year.

The company has met all covenants related to its credit facilities.

### 14. Comparative information

Certain comparative information has been reclassified to conform with the current year's financial statement presentation.



**COLLINGWOOD UTILITY SERVICES CORP.****FINANCIAL STATEMENTS****DECEMBER 31, 2010****CONTENTS**

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**GAVILLER & COMPANY LLP**  
**CHARTERED ACCOUNTANTS**

**NOTICE TO READER**

On the basis of information provided by management, we have compiled the balance sheet of **Collingwood Utility Services Corp.** as at December 31, 2010.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

*Gaviller & Company LLP*

Licensed Public Accountants

Collingwood, Ontario

April 26, 2011

# COLLINGWOOD UTILITY SERVICES CORP.

## BALANCE SHEET AS AT DECEMBER 31

	2010	2009
	\$	\$
<b>Assets</b>		
Due from Town of Collingwood	100	100
Investment in subsidiaries, at cost	5,101,540	5,101,540
	<b>5,101,640</b>	<b>5,101,640</b>
 <b>Shareholder's equity</b>		
Capital stock		
Authorized		
Unlimited common shares		
Issued		
5,101,640 common shares	5,101,640	5,101,640
	<b>5,101,640</b>	<b>5,101,640</b>
Total shareholder's equity	<b>5,101,640</b>	<b>5,101,640</b>

Approved on behalf of the board:

\_\_\_\_\_ Director

\_\_\_\_\_ Director

# COLLUS POWER CORP.

FINANCIAL STATEMENTS  
DECEMBER 31, 2010

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**GAVILLER & COMPANY LLP**  
CHARTERED ACCOUNTANTS

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**INDEPENDENT AUDITORS' REPORT**

To the Shareholder of **COLLUS Power Corp.**:

**Report on the Financial Statements**

We have audited the accompanying financial statements of **COLLUS Power Corp.**, which comprise the balance sheet as at December 31, 2010, and the income and retained income statement and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian generally accepted accounting principles and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the financial statements present fairly, in all material respects, the financial position of **COLLUS Power Corp.** as at December 31, 2010, and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

*Gaviller & Company LLP*

Licensed Public Accountants

Collingwood, Ontario

May 13, 2011

## COLLUS POWER CORP.

### BALANCE SHEET AS AT DECEMBER 31

	2010	2009
	\$	\$
<b>Assets</b>		
<b>Current</b>		
Cash	2,922,832	1,388,603
Accounts receivable	4,690,260	3,480,409
Unbilled revenue	3,343,566	3,024,852
Taxes recoverable	46,486	102,231
Prepaid expenses	130,846	74,050
Inventory	317,756	297,789
	11,451,746	8,367,934
<b>Property, plant and equipment (Note 6)</b>		
Lands	90,439	90,439
Buildings	494,142	255,668
Distribution stations	5,219,952	3,857,578
Distribution lines	20,475,695	19,596,227
Distribution transformers	5,184,349	5,020,605
Distribution meters and services	1,767,391	1,565,562
Load control	1,521,439	1,459,235
Other	1,991,042	2,838,992
Contributions in aid of construction (Note 3)	(9,636,769)	(9,354,806)
	27,107,680	25,329,500
Less accumulated amortization	(14,344,099)	(13,405,294)
	12,763,581	11,924,206
<b>Other</b>		
Goodwill	276,704	276,704
Intangible asset - computer software (net of accumulated amortization of \$232,256 (2009 - \$130,189))	278,072	338,117
Investment in Utility Collaborative Services Inc. - at cost	100	100
Future taxes recoverable	156,997	178,811
	711,873	793,732
	24,927,200	21,085,872

Approved by directors:

..... Director  
 \_\_\_\_\_ Director

See accompanying notes to the financial statements

## COLLUS POWER CORP.

### BALANCE SHEET AS AT DECEMBER 31

	2010	2009
	\$	\$
<b>Liabilities</b>		
Current		
Accounts payable and accruals (Notes 3 and 9)	7,384,308	7,350,989
Customer deposits	430,736	355,081
Current portion of long-term (Note 5)	200,000	-
	8,015,044	7,706,070
Long-term (Note 5)	4,410,170	1,710,170
Employee future benefits (Note 12)	308,029	281,085
Other (Note 4)	1,411,987	1,005,314
<b>Total liabilities</b>	<b>14,145,230</b>	<b>10,702,639</b>
<b>Shareholder's equity</b>		
Capital stock		
Authorized		
Unlimited common shares		
Issued		
5,101,340 common shares	5,101,340	5,101,340
Miscellaneous paid in capital	2,966,014	2,966,014
Retained income	2,714,616	2,315,879
<b>Total shareholder's equity</b>	<b>10,781,970</b>	<b>10,383,233</b>
	<b>24,927,200</b>	<b>21,085,872</b>

See accompanying notes to the financial statements

## COLLUS POWER CORP.

### INCOME AND RETAINED INCOME STATEMENT FOR THE YEAR ENDING DECEMBER 31

	2010	2009
	\$	\$
Revenue		
Sale of power	25,971,849	24,064,556
Distribution services	5,437,389	5,126,519
	31,409,238	29,191,075
Cost of power		
Power purchased	25,971,849	24,064,556
Distribution income (17.3%, 2009 - 17.6%)	5,437,389	5,126,519
Other revenue	556,865	488,295
	5,994,254	5,614,814
Operating and maintenance expenses (Note 9)		
Distribution and transmission	1,883,667	1,903,185
Billing and collecting	1,154,122	821,070
General administration	1,244,511	1,190,578
Amortization	967,205	1,004,161
	5,249,505	4,918,994
Operating income	744,749	695,820
Other expense		
Interest (Note 5)	249,634	179,149
Net income before taxes	495,115	516,671
Provision for (recovery of) taxes		
Current	74,564	100,906
Future	21,814	(32,937)
	96,378	67,969
Net income for the year	398,737	448,702
Retained income, beginning of year	2,315,879	1,867,177
Retained income, end of year	2,714,616	2,315,879

See accompanying notes to the financial statements



## COLLUS POWER CORP.

### CASH FLOW STATEMENT FOR THE YEAR ENDING DECEMBER 31

	2010	2009
	\$	\$
<b>Cash flows from (for):</b>		
<b>Operating activities</b>		
Net income	398,737	448,702
Items not requiring funds		
Amortization	1,150,939	1,112,226
Future taxes	21,814	(32,937)
Gain on disposition of property, plant, and equipment	(8,852)	-
	1,562,638	1,527,991
Changes in		
Accounts receivable	(1,209,851)	347,127
Unbilled revenue	(318,714)	445,532
Inventory	(19,967)	(42,658)
Accounts payable and accruals	33,319	(1,335,717)
Prepaid expenses	(56,795)	(18,316)
Taxes payable	55,745	78,488
Customer deposits	75,655	(191)
Employee future benefits	26,944	25,976
Other liabilities	406,673	(2,709,369)
	555,647	(1,681,137)
<b>Investing activities</b>		
Acquisition of property, plant and equipment	(1,930,270)	(926,226)
Investment in Utility Collaborative Services Inc.	-	(100)
Proceeds from disposal of property, plant, and equipment	8,852	-
	(1,921,418)	(926,326)
<b>Financing activities</b>		
Repayment of long-term liabilities	(100,000)	(1,117,353)
Issuance of long-term liabilities	3,000,000	-
	2,900,000	(1,117,353)
<b>Change in cash</b>	1,534,229	(3,724,816)
Cash position, beginning of year	1,388,603	5,113,419
<b>Cash position, end of year</b>	2,922,832	1,388,603

See accompanying notes to the financial statements

# COLLUS POWER CORP.

## NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 1. Significant accounting policies

The financial statements of the company are the representations of management. Since precise determination of many assets and liabilities is dependent upon future events, the preparation of periodic financial statements necessarily involves the use of estimates and approximations. These have been made using careful judgment based on available information. The most significant estimates are included in unbilled revenue and economic evaluations. The financial statements have, in the opinion of management, been properly prepared within the framework of the accounting policies summarized below:

- (a) The financial statements of the company have been prepared in accordance with Canadian generally accepted accounting principles ("GAAP"), including accounting principles prescribed by the Ontario Energy Board (OEB) through the accounting procedures handbook and directives.
- (b) The company's distribution of electricity is subject to rate regulation by the OEB. This rate regulation results in the company accounting for specific transactions differently than it would if it was not rate-regulated. The differences in accounting treatment give rise to regulatory assets or liabilities. These balances will be recovered from or returned to customers by increases or decreases to rates in the future.

The electricity rates charged by the company are approved on an annual basis using performance-based regulation. For the rate year ending April 30, 2010, the company was authorized to earn 8.01% on equity and 6.25% on debt with a deemed debt to equity ratio of 1:0.89.

- (c) The company recognizes revenue on an accrual basis, which includes unbilled revenue, which is an estimate of electricity consumed by customers to the end of year but not yet billed by the company.
- (d) Property, plant and equipment are stated at cost. Contributions received in aid of construction of property, plant and equipment are capitalized and amortized at the same rate as the related asset. Property, plant and equipment are amortized over their estimated useful lives, using the straight-line method. Assets constructed by others and donated to the company are recorded at cost to the developer. Amortization rates are 4% except as follows:

Buildings	2%
Distribution stations	3.33%
Other	6.67% to 20%

- (e) Deferred charges - service area expansion costs are being amortized on a straight-line basis over twenty-five years.
- (f) Taxes are calculated using the liability method of tax allocation accounting. Temporary differences arising from the difference between the tax basis of an asset or liability and its carrying amount on the balance sheet are used to calculate future tax liabilities or assets. Future tax liabilities or assets are calculated using tax rates anticipated to apply in the periods that the temporary differences are expected to reverse.

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## COLLUS POWER CORP.

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### NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

#### 1. Significant accounting policies (continued)

- (g) The company's inventory typically consists of poles and wire, unless purchased for specific capital projects in process or as spare units. Items for specific capital projects, spare transformers and meters are recorded as capital assets. The company's inventory is valued using the moving average cost method and is recorded at the lower of cost and net realizable value.
- (h) The company accounts for financial instruments using Canadian Institute of Chartered Accountants (CICA) Handbook Section 3861 - "Financial Instruments - Disclosure and Presentation" which establishes the requirement of disclosure of risks associated with financial instruments and the management of those risks.
- (i) Intangible assets

Intangible assets are externally acquired and are stated at cost. Amortization is provided on a straight-line basis over their estimated useful service lives at the following annual rates:

Computer software	20%
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#### 2. Future accounting pronouncements

The Accounting Standards Board has decided that rate regulated publicly accountable enterprises will be required to adopt International Financial Reporting Standards (IFRS) in place of Canadian GAAP for annual reporting purposes for fiscal years beginning on or after January 1, 2012. The transition period is expected to begin for fiscal years beginning on or after January 1, 2011. The impact of these changes cannot be estimated at this time.

Phase 1 of the company's IFRS implementation was complete as of October 2009. Phase 1 identified the company's needs with regard to the new standards and set out recommendations to meet those needs. Phase 2 was still in progress as of the 2010 audit report date, which includes reclassifying property, plant, and equipment to comply with IFRS.

#### 3. Contributions in aid of construction

Under the terms of the Distribution System Code, the company cannot charge a developer more than the difference between the present value of the projected capital costs and on-going maintenance costs for the equipment and the present value of the projected revenue for distribution services provided by those facilities. These amounts are determined by an economic evaluation study of the project. The company estimates that it will return \$365,610 (2009 - \$365,610). The liability is included in accounts payable. The balance of \$9,636,769 (2009 - \$9,354,806) is recorded as a reduction of the cost of property, plant, and equipment.

## COLLUS POWER CORP.

### NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

#### 4. Other assets (liabilities)

Other assets (liabilities) consist of the following:

	2010	2009
	\$	\$
Deferred charges-service area expansion (net of \$98,899 accumulated amortization, (2009 - \$90,744))	106,015	114,170
<b>Regulatory assets</b>		
Other regulatory assets	225,179	66,530
Smart meter variance	1,838,379	1,927,304
<b>Total regulatory assets</b>	<b>2,063,558</b>	<b>1,993,834</b>
<b>Regulatory liabilities</b>		
Purchased power cost variance	(938,916)	(2,562,776)
Regulatory recoveries	(2,562,854)	(507,194)
Other regulatory liabilities	(79,790)	(43,348)
<b>Total regulatory liabilities</b>	<b>(3,581,560)</b>	<b>(3,113,318)</b>
<b>Net liability</b>	<b>(1,411,987)</b>	<b>(1,005,314)</b>

Other regulatory assets consist of Hydro One incremental capital and pension costs from OMBRS not recovered in rates. This account includes annual carrying charges accrued at the OEB quarterly interest rate in effect.

In 2010 the OEB approved the disposition of power variances from December 31, 2008. The liability is being paid back through a reduction of customer's monthly billings over a period of three years, beginning in May 2010.

The purchased power cost variance represents variances in the purchase and sale of electricity which will be recovered from or returned to customers by increases or decreases to rates in the future. Purchased power cost variance includes annual carrying charges accrued at the OEB quarterly interest rate in effect.

The smart meters regulatory asset account relates to the Province of Ontario's decision to install smart meters throughout Ontario by 2011. The company launched its project shortly following the Province of Ontario's announcement in 2006. As at December 31, 2010, the company had installed approximately 15,000 smart meters. The company is currently authorized to collect \$2.00 per residential customer per month. Carrying charges are accrued on this account for 2007 and later years at the OEB quarterly interest rate in effect. As at December 31, 2010, smart meter capital expenditures totaled \$2,414,022 (2009 - \$2,257,264) which is offset by revenues of \$575,644 (2009 - \$262,021) and accumulated amortization of \$215,072 (2009 - \$67,939).

## COLLUS POWER CORP.

### NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

#### 5. Long-term liabilities

Long-term liabilities consist of the following:

	2010	2009
	\$	\$
4.67% loan payable to the Ontario Infrastructure Projects Corporation, secured by a General Security Agreement over all of the assets of the company. Payments are to be made semi-annually to April 15, 2025.	2,900,000	-
7.25% note payable to the Town of Collingwood, no set terms of repayment	1,710,170	1,710,170
Current portion	4,610,170 (200,000)	1,710,170 -
	<b>4,410,170</b>	<b>1,710,170</b>

Principal payments in the next year are as follows:

	\$
2011	200,000
2012	200,000
2013	200,000
2014	200,000
2015	200,000

Included in interest expense is \$176,802 (2009 - \$129,020) of interest on long-term liabilities.

The company is contingently liable for a letter of credit in the amount of \$2,046,656 (2009 - \$1,631,702) to meet the prudential requirements of the Independent Electricity System Operator.

#### 6. Property, plant, and equipment

Effective in 2010 and under the direction of the OEB, the company had the option of moving stranded meter costs into the regulatory asset accounts or leave them in property, plant, and equipment. The company decided to keep them in property, plant, and equipment and continue to amortize the stranded meter costs. The balance of stranded meters in property, plant, and equipment is \$1,529,891 and the accumulated amortization is \$909,545 (2009 - \$863,275).

## COLLUS POWER CORP.

### NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

#### 7. Financial instruments

The company's financial instruments consist of cash, accounts receivable, unbilled revenue, taxes recoverable, investment in Utility Collaborative Services Inc., accounts payable and accruals, customer deposits, and long-term liabilities. It is management's opinion that the company is not exposed to significant interest, currency or credit risks arising from these financial instruments. Fair value does not vary significantly from recorded value.

#### 8. Tax status

The company is exempt from income tax under section 149 of the Income Tax Act. The company is required to make payments in lieu of taxes calculated on the same basis as the Income Tax Act.

#### 9. Related party transactions

Collingwood Public Utilities Service Board, COLLUS Solutions Corp., and the company are controlled by the council of the Town of Collingwood.

Related party transactions are recorded at their exchange amount and include the following:

	2010	2009
	\$	\$
Amounts payable to the Collingwood Public Utilities Service Board	(93,479)	(496,809)
Amounts payable to COLLUS Solutions Corp.	(135,797)	(94,769)
Amounts payable to the Town of Collingwood	(1,831,697)	(412,995)
The company is leasing its operations centre from the Collingwood Public Utilities Service Board. The lease has a one year term and is renewable annually. These costs are included in general administration expense.	200,000	200,000
Operating and maintenance expenses include services purchased from COLLUS Solutions Corp.	1,174,677	1,114,125
COLLUS Power Corp. is leasing computer equipment from Collingwood Public Utilities Service Board. This amount is included in the above netted expenses.	117,000	117,000

#### 10. Supplemental cash flow information

Cash receipts and (payments) were as follows:

	2010	2009
	\$	\$
Interest paid	(221,064)	(179,149)
Interest received	49,997	68,862
Taxes paid	(121,050)	(204,160)
Taxes refunded	102,231	181,742

## COLLUS POWER CORP.

### NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

#### 11. Line of credit

The company has a revolving line of credit with CIBC with a credit limit of \$500,000. The interest rate is set at prime minus 0.75% per annum. During 2010 the company did not draw on their line of credit.

#### 12. Employee future benefits

The employees of COLLUS Power Corp. participate in the Ontario Municipal Employees Retirement System ("OMERS"). Although the plan has a defined retirement benefit for employees, the related obligation of the company cannot be identified. The OMERS plan has several unrelated participating municipalities and costs are not specifically attributed to each participant. Amounts paid to OMERS during the year totaled \$50,626 (2009 - \$60,174).

In addition, COLLUS Power Corp. pays certain benefits on behalf of its retired employees. The company recognizes these post-retirement costs in the period in which the employees rendered the services. The accrued benefit obligation at December 31, 2010 of \$308,029 and the net periodic benefit cost for 2010 was determined by actuarial valuation using discount rates of 6.0% and was adjusted by management based on new information available. Actuarial valuations will be prepared every second year or when there are significant changes to the workforce.

Information about the company's defined benefit plan is as follows:

	2010	2009
	\$	\$
<b>Accrued benefit obligation</b>		
Balance at the beginning of period	281,085	255,109
Current service cost for the period	10,157	9,582
Interest cost for the period	20,555	19,409
Actuarial loss	52,235	54,778
Prior period cost	4,531	9,063
Benefits paid for the period	(10,842)	(10,090)
Projected accrued benefit obligation at end of period as determined by actuarial valuation.	357,721	337,851
Unamortized actuarial loss	(49,692)	(52,235)
Unamortized prior service cost	-	(4,531)
<b>Balance at end of period</b>	<b>308,029</b>	<b>281,085</b>
<b>Components of net periodic benefit cost</b>		
Current service cost for the period	10,157	9,582
Interest cost for the period	20,555	19,409
Amortization of actuarial loss	2,543	2,543
Amortization of prior service cost	4,531	4,531
<b>Net periodic benefit cost</b>	<b>37,786</b>	<b>36,065</b>

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## COLLUS POWER CORP.

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### NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

#### 12. Employee future benefits (continued)

The main actuarial assumptions employed for the valuations are as follows:

(a) General inflation

Future general inflation levels, as measured by changes in the Consumer Price Index ("CPI"), were assumed at 2.0% in 2010 and thereafter.

(b) Interest (discount) rate

The obligation as at December 31, 2010, of the present value of future liabilities was determined using a discount rate of 6.0%. This corresponds to the assumed CPI rate plus an assumed real rate of return of 4.0%.

(c) Salary levels

Future general salary and wage levels were assumed to increase at 3.3% per annum.

(d) Medical costs

Medical costs were assumed to be 9.0% in 2010 and graded down 0.67% a year until 2015 after which the rate is assumed to increase 5.0% annually.

(e) Dental costs

Dental costs were assumed to increase at 5.0% in 2010 and thereafter.

#### 13. Capital disclosures

The company's main objectives when managing capital are to:

- (a) Ensure ongoing access to funding to maintain and improve the electricity distribution system and to ensure that capital needs are met.
- (b) Ensure compliance with covenants related to its credit facilities and the Town of Collingwood promissory note.
- (c) Ensure that the capital structure is such that the debt to equity structure deemed by the OEB is not exceeded.

As at December 31, 2010, the company's definition of capital includes shareholder's equity and long-term debt. The company's debt to equity ratio as defined by the OEB, as at December 31, 2010 is 1:2.98 (2009 - 1:2.98). There have been no changes in the company's approach to capital management during the year.

The company has met all covenants related to its credit facilities.

#### 14. Comparative information

Certain comparative information has been reclassified to conform with the current year's financial statement presentation.



# COLLUS SOLUTIONS CORP.

FINANCIAL STATEMENTS  
DECEMBER 31, 2010

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**GAVILLER & COMPANY LLP**  
**CHARTERED ACCOUNTANTS**

**INDEPENDENT AUDITORS' REPORT**

To the Shareholder of **COLLUS Solutions Corp.**:

**Report on the Financial Statements**

We have audited the accompanying financial statements of **COLLUS Solutions Corp.**, which comprise the balance sheet as at December 31, 2010, and the income and retained income statement and cash flow statement for the year then ended, and a summary of significant accounting policies and other explanatory information.

**Management's Responsibility for the Financial Statements**

Management is responsible for the preparation and fair presentation of these financial statements in accordance with Canadian generally accepted accounting principles and for such internal control as management determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

**Auditors' Responsibility**

Our responsibility is to express an opinion on these financial statements based on our audit. We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we comply with ethical requirements and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

**Opinion**

In our opinion, the financial statements present fairly, in all material respects, the financial position of **COLLUS Solutions Corp.** as at December 31, 2010, and the results of its operations and its cash flows for the year then ended in accordance with Canadian generally accepted accounting principles.

*Gaviller & Company LLP*

Licensed Public Accountants  
Collingwood, Ontario  
May 13, 2011

# COLLUS SOLUTIONS CORP.

## BALANCE SHEET AS AT DECEMBER 31

	2010	2009
	\$	\$
<b>Assets</b>		
Current		
Cash	208,958	183,822
Accounts receivable (Note 3)	415,168	350,105
Taxes receivable	6,927	2,172
	<b>631,053</b>	<b>536,099</b>
Future taxes	<b>86,826</b>	<b>77,026</b>
	<b>717,879</b>	<b>613,125</b>
<b>Liabilities</b>		
Current		
Accounts payable and accruals	168,793	85,849
Employee future benefits (Note 9)	347,303	314,390
<b>Total liabilities</b>	<b>516,096</b>	<b>400,239</b>
<b>Shareholder's equity</b>		
Capital stock		
Authorized		
Unlimited common shares		
Issued		
100 common shares	100	100
Retained income	201,683	212,786
<b>Total shareholder's equity</b>	<b>201,783</b>	<b>212,886</b>
	<b>717,879</b>	<b>613,125</b>

Approved on behalf of the Board:

\_\_\_\_\_ Director

\_\_\_\_\_ Director

See accompanying notes to the financial statements

## COLLUS SOLUTIONS CORP.

### INCOME AND RETAINED INCOME STATEMENT FOR THE YEAR ENDED DECEMBER 31

	2010	2009
	\$	\$
Revenue (Note 3)		
Accounting and administrative services	2,056,480	1,926,006
Miscellaneous	72,920	69,676
	2,129,400	1,995,682
Operating expenses (Note 3)		
Administration	31,580	19,585
Wages and benefits	2,115,665	1,958,770
	2,147,245	1,978,355
Income (loss) before taxes	(17,845)	17,327
Provision for (recovery of) taxes		
Current	3,058	9,849
Future	(9,800)	(14,556)
	(6,742)	(4,707)
Net (loss) income for the year	(11,103)	22,034
Retained income, beginning of year	212,786	190,752
Retained income, end of year	201,683	212,786

See accompanying notes to the financial statements

# COLLUS SOLUTIONS CORP.

## CASH FLOW STATEMENT FOR THE YEAR ENDED DECEMBER 31

	2010	2009
	\$	\$
<b>Cash flows from (for):</b>		
<b>Operating activities</b>		
Net (loss) income	(11,103)	22,034
Items not providing funds		
Future taxes	(9,800)	(14,556)
	(20,903)	7,478
Changes in		
Accounts receivable	(65,063)	(30,757)
Income taxes	(4,755)	6,265
Accounts payable and accruals	82,944	(108,715)
Employee future benefits	32,913	30,435
<b>Change in cash</b>	<b>25,136</b>	<b>(95,294)</b>
Cash position, beginning of year	183,822	279,116
<b>Cash position, end of year</b>	<b>208,958</b>	<b>183,822</b>

See accompanying notes to the financial statements

# COLLUS SOLUTIONS CORP.

## NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 1. Significant accounting policies

The financial statements of the company are the representations of management. Since precise determination of many assets and liabilities is dependent upon future events, the preparation of periodic financial statements necessarily involves the use of estimates and approximations. These have been made using careful judgment based on available information. The most significant estimates are included in employee future benefits. The financial statements have, in the opinion of management, been properly prepared within the framework of the accounting policies summarized below:

#### (a) Revenue Recognition

Revenue from accounting and administrative services provided are recognized at the time in which the services were provided.

#### (b) Financial Instruments

The company has adopted Canadian Institute of Chartered Accountants (CICA) Handbook Section 3861 - "Financial Instruments - Disclosure and Presentation" which establishes the requirement of disclosure of risks associated with financial instruments and the management of those risks. The adoption of this standard did not have any impact on the company's results of operations or financial position.

### 2. Tax status

The company is exempt from income tax under section 149 of the Income Tax Act. The company is required to make payments in lieu of tax calculated on the same basis as the Income Tax Act.

### 3. Related party transactions

The company, COLLUS Power Corp. and Collingwood Public Utilities Service Board are controlled by the council of the Town of Collingwood.

Related party transactions are recorded at their exchange value and include the following:

	2010	2009
	\$	\$
Amounts receivable from COLLUS Power Corp.	135,797	94,769
Amounts receivable from Collingwood Public Utilities Service Board	171,234	162,324
Amounts receivable from the Town of Collingwood	91,413	75,536
Revenues include amounts charged to the following parties:		
Town of Collingwood	68,461	62,517
COLLUS Power Corp.	1,174,677	1,114,125
Collingwood Public Utilities Service Board	881,803	811,881
Expenses include information technology assistance to the		
Town of Collingwood	21,631	20,029

# COLLUS SOLUTIONS CORP.

## NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 4. Line of credit

The company has a revolving line of credit with CIBC with a credit limit of \$250,000. The interest rate is set at prime minus 0.75% per annum. During 2010 the company did not draw on their line of credit.

### 5. Economic dependence

As the company's major source of revenue is derived from providing processing services to related parties its ability to continue viable operations is dependent upon COLLUS Power Corp. and Collingwood Public Utilities Service Board.

### 6. Future Accounting Pronouncements

The company will be required to adopt International Financial Reporting Standards (IFRS) in place of Canadian GAAP for annual reporting purposes for fiscal years beginning on or after January 1, 2012. The transition period is expected to begin for fiscal years beginning on or after January 1, 2011. It is subject to IFRS in 2012 as it is consolidated under Collingwood Utilities Services Corp. financial statements with Collus Power Corp. a sister company who is required to adopt IFRS starting in 2012. The impact of these changes cannot be estimated at this time.

Phase 1 of the company's IFRS implementation was complete as of October 2009. Phase 1 identified the company's needs with regard to the new standards and set out recommendations to meet those needs.

### 7. Financial instruments

The company's financial instruments consist of cash, accounts receivable, taxes recoverable and accounts payable and accruals. It is management's opinion that the company is not exposed to significant interest, currency or credit risks arising from these financial instruments. Fair value does not vary significantly from recorded value.

### 8. Supplemental cash flow information

Cash receipts (payments) were made as follows:

	2010	2009
	\$	\$
Interest received	1,256	1,555
Interest paid	(153)	-
Taxes refunded	2,172	8,376
Taxes paid	(9,900)	(11,960)

# COLLUS SOLUTIONS CORP.

## NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 9. Employee future benefits

The employees of COLLUS Solutions Corp. participate in the Ontario Municipal Employees Retirement System ("OMERS"). Although the plan has a defined retirement benefit for employees, the related obligation of the company cannot be identified. The OMERS plan has several unrelated participating municipalities and costs are not specifically attributed to each participant. Amounts paid to OMERS during the year totaled \$165,576 (2009 - \$167,748).

In addition, COLLUS Solutions Corp. pays certain benefits on behalf of its retired employees. The company recognizes these post-retirement costs in the period in which the employees rendered the services. The accrued benefit obligation at December 31, 2010 of \$347,303 and the net periodic benefit cost for 2010 was determined by actuarial valuations using discount rates of 6.0% and was adjusted by management based on new information available. Actuarial valuations will be prepared every second year or when there are significant changes to the workforce.

Information about the company's defined benefit plan is as follows:

	2010	2009
	\$	\$
<b>Accrued benefit obligation</b>		
Balance at the beginning of period	314,390	283,955
Current service cost for the period	12,861	12,133
Interest cost for the period	18,260	16,505
Actuarial gain	(24,764)	(24,764)
Prior period cost	1,903	3,805
Benefits paid for the period	(111)	(105)
Projected accrued benefit obligation at end of period as determined by actuarial valuation.	322,539	291,529
Unamortized actuarial gain	24,764	24,764
Unamortized prior service cost	-	(1,903)
<b>Balance at end of period</b>	<b>347,303</b>	<b>314,390</b>
<b>Components of net periodic benefit cost</b>		
Current service cost for the period	12,861	12,133
Interest cost for the period	18,260	16,505
Amortization of prior service cost	1,903	1,902
<b>Net periodic benefit cost</b>	<b>33,024</b>	<b>30,540</b>



# COLLUS SOLUTIONS CORP.

## NOTES TO THE FINANCIAL STATEMENTS AS AT DECEMBER 31, 2010

### 9. Employee future benefits (continued)

The main actuarial assumptions employed for the valuations are as follows:

(a) General inflation

Future general inflation levels, as measured by changes in the Consumer Price Index ("CPI"), were assumed at 2.0% in 2010 and thereafter.

(b) Interest (discount) rate

The obligation as at December 31, 2010, of the present value of future liabilities was determined using a discount rate of 6.0%. This corresponds to the assumed CPI rate plus an assumed real rate of return of 4.0%.

(c) Salary levels

Future general salary and wage levels were assumed to increase at 3.3% per annum.

(d) Medical costs

Medical costs were assumed to increase at 9.0% in 2010 graded down 0.67% a year until 2015 after which the rate is assumed to increase 5.0% annually.

(e) Dental costs

Dental costs were assumed to increase at 5.0% in 2010 and thereafter.

### 10. Capital disclosures

The company's main objectives when managing capital are to:

- (a) Ensure ongoing access to funds that will allow the ongoing operation of the service company.
- (b) Ensure compliance with covenants related to its credit facilities.

As at December 31, 2010, the company's definition of capital includes shareholder's equity and long-term debt. There have been no changes in the Company's approach to capital management during the year.

The company has met all covenants related to its credit facilities.

**COLLUS ENERGY CORP.**

**FINANCIAL STATEMENTS**

**DECEMBER 31, 2010**

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**GAVILLER & COMPANY LLP**  
**CHARTERED ACCOUNTANTS**

**NOTICE TO READER**

On the basis of information provided by management, we have compiled the balance sheet of **COLLUS Energy Corp.** as at December 31, 2010.

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

*Gaviller & Company LLP*

Licensed Public Accountants

Collingwood, Ontario

May 13, 2011

# COLLUS ENERGY CORP.

## BALANCE SHEET AS AT DECEMBER 31

	2010	2009
	\$	\$
<b>Assets</b>		
Due from Town of Collingwood	<b>100</b>	100
<b>Total assets</b>	<b>100</b>	100
<b>Shareholder's equity</b>		
Capital stock		
Authorized		
Unlimited number of common shares		
Issued		
100 common shares	<b>100</b>	100
<b>Total shareholder's equity</b>	<b>100</b>	100

Approved on behalf of the Board:

\_\_\_\_\_ Director

\_\_\_\_\_ Director

**Schedule 5.2(21)**

**Service Agreements**

3. Computer Rental Agreement between Collus Solutions Corp and Collingwood Public Utilities Commission, dated December 3, 2003 (between Solutions and Collingwood Public Utilities Commission ("CPUC"), which agreement was based on, and amended, section 3(c) of the Shared Facilities Lease dated January 1, 2002, between CPUC and Collus. No agreement was made for January 1, 2003), November 4, 2004 (between Solutions and CPUC), January 1, 2005 (between Collus and CPUC), December 14, 2005 (between Solutions and CPUC), December 19, 2007 (between Collus and CPUC), December 15, 2008 (between Collus and CPUC), December 16, 2009 (between Collus and CPUC), January 31, 2011 (between Collus and CPUC). Please note that no formal renewal is in place for 2012, however the parties thereto have continued the arrangement as in previous years.
4. Services Agreement between Collingwood Public Utilities Commission and Collus Solutions Corp., dated January 1, 2003 and amending agreement dated November 4, 2004.
5. Services Agreement between Collus Power Corp. and Collus Solutions Corp., dated December 18, 2002 and amending agreement dated December 17, 2003.
6. Street Lighting Agreement between Collus Power Corp and Collus Solutions Corp., dated January 1, 2003.
7. Street Lighting Agreement between Collus Solutions Corp. and The Town of Collingwood, dated January 1, 2003.