

THIS ROAD USE AGREEMENT (the “**Agreement**”) made as of this ___ day of _____, 2017 (“**Effective Date**”),

BETWEEN:

THE CORPORATION OF HALDIMAND COUNTY
hereinafter referred to as the “**County**”

OF THE FIRST PART

- AND -

NANTICOKE SOLAR LP,
by its general partner **NANTICOKE SOLAR INC.**

hereinafter referred to as the “**Proponent**”

OF THE SECOND PART

(each a “**Party**” and, collectively, the “**Parties**”)

WHEREAS the Proponent is developing an approximately 44 megawatt (MW) commercial solar energy project known as the Nanticoke Solar Project (the “**Project**”) that is located in Haldimand County (the “**Municipality**”);

AND WHEREAS the Proponent wishes to make use of certain Road Allowances, as hereinafter defined, to make deliveries of materials and components to, and to allow for the construction, operation and maintenance of the Project;

AND WHEREAS the Proponent may wish to temporarily reconstruct or realign certain portions of the Road Allowances to permit delivery or movement of oversized Project components;

AND WHEREAS the Proponent also wishes to construct, install, maintain, operate, upgrade, repair, replace and remove Electrical Infrastructure, as hereinafter defined, over, across, along, within or under certain Road Allowances;

NOW THEREFORE IN CONSIDERATION of the undertakings and agreements hereinafter expressed by the Parties, the County and the Proponent mutually covenant and agree as follows:

1. Interpretation

1.1 In this Agreement:

- (a) “**Abandon**” shall have the meaning set out in Section 10.1 and “**Abandonment**” shall have the corresponding meaning;
- (b) “**Applicable Law**” means all present or future applicable laws, statutes, regulations, treaties, judgements and decrees and all present or future applicable published directives, rules, policy statements and orders of any Public Authority and all applicable orders and decrees of courts and arbitrators to the extent, in each case, that the same are legally binding on a Party in the context of this Agreement;
- (c) “**Commercial Operation Date**” means the date upon which the Project begins transmitting electricity for commercial purposes;
- (d) “**Deliveries**” is defined as transporting materials, components and equipment, including overweight or over-size cargoes, across or along Road Allowances to provide for the construction, maintenance, repair, replacement, relocation or removal of the Project;
- (e) “**Effective Date**” is defined at the top of page 1 herein;
- (f) “**Electrical Infrastructure**” means infrastructure for the transmission of medium voltage electricity, including a line or lines of towers or poles, and wires or cables (whether above ground or buried), for the transmission of electrical energy, and all foundations, footings, cross arms and other appliances, facilities and fixtures for use in connection therewith including without limitation, splice vaults, duct banks, manholes, handholes, conduit, fiber optics, cables, wires, lines and other conductors of any nature, multiple above or below ground control, communications, data and radio relay systems, and telecommunications equipment, including without limitation, conduit, fiber optics, cables, wires and lines;
- (g) “**Electrical Work**” is defined as installing, constructing, operating, inspecting, maintaining, upgrading, altering, enlarging, repairing, replacing, relocating or removing Electrical Infrastructure over, along, across, within or under the Road Allowances in connection with the Project;
- (h) “**Emergency**” shall mean a sudden unexpected occasion or combination of events necessitating immediate action to prevent or mitigate materially adverse consequences to the health and safety of individuals or the integrity and safety of public utilities and infrastructure;

- (i) “**Entrance Work**” is defined as constructing and maintaining Entrances to private access roads;
- (j) “**Entrances**” means points of access across and through the Road Allowances to be constructed by the Proponent, as applicable, from the travelled portion of the Road Allowances connecting to certain access roads in and upon adjacent lands that lead to Project facilities and other infrastructure;
- (k) “**Initial Term**” shall have the meaning set out in Section 2.2;
- (l) “**Installation Work**” means Road Work and other work involving or incidental to the installation, construction, maintenance, operation, upgrade, enlargement, relocation or removal of Electrical Infrastructure and Entrances;
- (m) “**Permits**” means, collectively, the Haldimand County Oversize Load Permit, the Haldimand County Entrance Permit and the Haldimand County Road Occupation/Excavation Permit.
- (n) “**Plans**” is defined as detailed plans that identify the location, size, elevation and scope of the Installation Work and demonstrate that the Installation Work will comply with applicable safety, technical and regulatory standards and the requirements of Applicable Law;
- (o) “**Public Authority**” means any governmental, federal, provincial, regional, municipal or local body having authority over the County, the Proponent, the Project, the Electrical Infrastructure or the Road Allowances;
- (p) “**Renewal Term**” shall have the meaning set out in Section 2.2;
- (q) “**Repair Work**” means work involving the maintenance, repair or replacement of installed Electrical Infrastructure and Entrances that does not cause the location, elevation, position, layout or route of the Electrical Infrastructure or Entrance to materially change;
- (r) “**Road Allowances**” means public rights of way, highways, streets, sidewalks, walkways, driveways, ditches and boulevards and the allowances therefor, including those shown on the map attached as Schedule “A” hereto, and including the Entrances and unopened road allowances, all owned by or managed under the legal jurisdiction of the County, and “**Road Allowance**” means one of the Road Allowances, as applicable in the context of this Agreement;
- (s) “**Road Work**” is defined as temporarily reconstructing or re-aligning road sections, turns and intersections on the Road Allowances to permit the passage of overweight or over-size cargoes;
- (t) “**Secured Party**” or “**Secured Parties**” is defined as a party or parties which from time to time provides financing to the Proponent in respect of the development,

construction or operation of the Project or the Work, as determined by the Proponent in its sole discretion;

- (u) “**Traffic Effects**” is defined as temporary modification of traffic patterns or the imposition of temporary restrictions on public access to or use of the Road Allowances;
- (v) “**Tree Work**” is defined as cutting, trimming, removing, destroying or otherwise controlling any or all trees, bushes or brush now or hereafter standing or growing in the Road Allowances; and
- (w) “**Work**” means, collectively, Deliveries, Road Work, Entrance Work, Tree Work, Repair Work and Electrical Work as defined herein.

1.2 The following schedule is attached to this Agreement and forms an integral part of this Agreement:

Schedule “A” - Plan showing Road Allowances expected to be required for the Project.

Schedule “B” – Schedule of Permit Fees

Schedule “C” – Conceptual Design of the future Haldimand County Sanitary or Water Transmission Lines

Schedule "D" – Rights and Remedies Afforded to Secured Parties

1.3 Nothing contained in this Agreement shall abrogate or prejudice any rights held by either Party under Applicable Law including but not limited to the *Ontario Energy Board Act, 1998*, the *Municipal Act, 2001*, the *Green Energy Act, 2009*, the *Electricity Act, 1998*, and the *National Energy Board Act*, as amended.

2. Grant and Transfer of Easement

2.1 The County hereby grants and transfers to the Proponent the non-exclusive right and easement to enter upon and use the Road Allowances with such persons, vehicles, equipment and machinery as may be necessary for purposes of:

- (a) Deliveries and Road Work, subject to the conditions in the form of the Haldimand County Oversize Load Permit.
- (b) Entrance Work, provided that the Proponent first acquires at its own expense any property rights to private lands required for the Entrance Work, and use of such Entrances, subject to the conditions in the form of the Haldimand County Entrance Permit.
- (c) Electrical Work and Tree Work, subject to the conditions in the form of the Haldimand County Road Occupancy Permit.

- 2.2 This Agreement shall become effective as of the Effective Date. The Agreement shall continue in full force and effect for a period of twenty (20) years (the “**Initial Term**”) and shall automatically renew for a further period of twenty (20) years (the “**Renewal Term**”) commencing on the date of expiry of the Initial Term. The Renewal Term will be on the same terms, covenants and conditions as are set forth in this Agreement. Upon termination of this Agreement, the Proponent shall assist the County in assuming full operation and occupation of the Road Allowances and will return the travelled portion of the Road Allowance to the County in the same or better condition as it was upon the Effective Date of this Agreement, ordinary wear and tear excepted. However, for greater certainty, the Proponent shall not be required to remove any buried Electrical Infrastructure in the event of termination.
- 2.3 Subject to Section 6 of this Agreement, the County reserves its right to enter upon and use the Road Allowances without notice to the Proponent for its own municipal purposes and to grant and transfer rights to third parties to enter upon and use the Road Allowances to construct, operate, maintain, alter, repair or relocate infrastructure, and to modify the Road Allowances, provided that such entry, use, grant or transfer will not adversely affect or interfere with the Work, the Project or the exercise of the Proponent’s rights under this Agreement.
- 2.4 The County agrees that the fees to be charged to the Proponent for any Permits and approvals to be issued by the County in connection with the Work, including the Oversize Load Permits, Entrance Permits and Occupation/Excavation Permits, are set forth in Schedule “B” to this Agreement and the County warrants that such fees do not exceed the usual and customary fees that are generally applicable to the public.
- 2.5 The County represents and warrants that:
- (a) it has legal and beneficial title to the Road Allowances and full power and authority to grant the rights over the Road Allowances in the manner set out in this Agreement;
 - (b) except as otherwise required by this Agreement, the Permits are the only permits, approvals, consents or authority within the jurisdiction of the County required in connection with the Work;
 - (c) the execution and delivery of this Agreement by the County will not result in a material breach of any other agreement to which the County is a party and no rights, interests or privileges have been granted in respect of the Road Allowances by the County which will or could adversely affect the rights, interests or privileges granted to the Proponent hereunder;
 - (d) it has obtained the full and unconditional due authorization for the execution and delivery of this Agreement by all required resolutions and other required municipal approvals;
 - (e) it shall defend its title to the Road Allowances against any person or entity claiming any interest adverse to the County in the Road Allowances during the term of this

Agreement, save and except where such adverse interest arises as a result of the act, omission, negligence or wilful misconduct of the Proponent or those for whom it is in law responsible;

- (f) the Permits are the only permits, approvals, consents, or authority within the jurisdiction of the County required in connection with the Work and the fees set forth in Schedule “B” attached hereto are the only fees payable by the Proponent in connection with the Permits; and
 - (g) it may refuse to issue Permit only for a *bona fide* municipal purpose, including reasons of public safety and health or conflicts with the County’s infrastructure, proposed road construction or proper functioning of public service, as shall be identified by the County.
- 2.6 The County makes no representations or warranties as to the state of repair of the Road Allowance for any business, activity or purpose whatsoever, and the Proponent hereby agrees to accept the Road Allowance on an “as is, where is” basis.
- 2.7 The County shall, in the event it decides to permanently close or dispose of any Road Allowance which may affect the interests of the Proponent, or any part of a Road Allowance, provide the Proponent with reasonable advance written notice of such proposed closing or disposal and to grant and transfer to the Proponent, at no cost to the Proponent and prior to the proposed closure or disposal of the applicable Road Allowance, such further easements and rights-of-way, in registerable form and in priority to any encumbrances adversely affecting the rights and interests of the Proponent hereunder, over that part of the Road Allowance closed or disposed of, sufficient to allow the Proponent to preserve any part of the Electrical Infrastructure in its then existing location, to enter upon such closed or disposed of Road Allowance to perform Work and to gain access to the Project on the terms and conditions set out in this Agreement. Notwithstanding the foregoing, if the closure of the Road Allowance requires the Proponent to relocate any part of the installed Electrical Infrastructure or Entrances, then the Parties shall, prior to the proposed closing or disposal of the Road Allowance, effect such relocation in accordance with Section 6 of this Agreement.
- 2.8 In the event that the County decides to dispose of any Road Allowance or part thereof which may affect the interests of the Proponent, the County shall require the transferee or assignee of such Road Allowance, as a condition precedent to the transfer or assignment, to agree in writing with the Proponent, in a form acceptable to the Proponent acting reasonably, to be bound by the terms of this Agreement and to assume the County’s obligations hereunder from and after the date of the transfer or assignment.
- 2.9 The Parties agree that the Electrical Infrastructure is owned by the Proponent and the County has no interest in it.
- 2.10 The Parties agree that the Proponent’s use of the Road Allowances shall not create nor vest in the Proponent any ownership or property rights therein.

3. Conditions Precedent to Commencement of Work

- 3.1 The Proponent will indemnify, defend and hold harmless the County from and against all claims, liabilities, losses, costs, damages or other expenses of every kind that the County may incur or suffer as a consequence of personal and/or bodily injury, including death, and property damages arising out of any negligent act or omission in performance of the Work or the wilful misconduct of Proponent or those for whom it is in law responsible. If notice of a claim is received alleging damages or loss as a result of the Proponent's activities or the easement granted pursuant to this Agreement, the Proponent shall be responsible for claims management including but not limited to investigation and resolution which management shall continue until rectified, which may exceed the life of this Agreement. The Proponent shall provide the County with status updates of any claims being managed that arise as a result of the activities carried out or the easement granted in accordance with this Agreement.
- 3.2 The Proponent hereby covenants and agrees that it shall, at its sole expense, obtain and maintain, throughout the term of the easement agreement a Commercial General Liability Policy with coverage for bodily injury and property damage on an occurrence basis with a limit of not less than five million dollars (\$5,000,000). Such policy shall name Haldimand County as additional insured, contain cross liability and severability of interest clauses and provide for 30 days' written notice of cancellation. Proponent shall provide the County with a Certificate of Insurance as evidence of such insurance prior to execution of the Easement Agreement and upon the anniversary date of the applicable policy described herein.
- 3.3 Prior to the commencement of any Work, the Proponent shall document, by means of video recording or another means satisfactory to the County acting reasonably and acceptable to Proponent, the then-existing condition of all Road Allowances and structures that the Proponent expects will or may be used for or subject to such Work, and both Parties shall receive a complete copy of such document.
- 3.4 The Proponent shall provide project-specific security in an amount equal to the estimated project-specific repair costs, as determined by the County acting reasonably, and the County shall release said security once the project-specific repairs are completed in accordance with Section 4.3 and 4.5 of this Agreement.
- 3.5 Where it is deemed preferable to the County that the Repair Work be incorporated into the costs of a larger restoration or reconstruction project, notice and written specifications of the extent and expected costs of such larger project shall be provided to the Proponent by the County and the costs of the Repair Work shall be agreed upon by the Parties, each acting reasonably. Upon written approval of such work and costs by the Proponent, (i) the Proponent shall pay the agreed costs to the County within thirty (30) days of such agreement, whereupon the Proponent shall have no further responsibility for such Repair Work and the Proponent shall be deemed to be released from its obligations under Sections 4.3 and 4.4 with respect to such Repair Work.

4. Work Generally

- 4.1 Notwithstanding and without limiting any other term hereof, the Proponent agrees and undertakes that it will perform the Work at its own expense in accordance with and compliance with good engineering practices, any applicable industry standards, any applicable Plans or Permits approved by the County, this Agreement and Applicable Law. The Proponent shall ensure that its contractors have proper identification visible on the Work site that displays the name of the person for whom they work.
- 4.2 Notwithstanding and without limiting any other term hereof, the Parties acknowledge that the Work from time to time may require Traffic Effects. The Proponent agrees to:
- (a) give five (5) days' notice of anticipated Traffic Effects to the County and affected residents and to coordinate with the County and local emergency services to minimize and mitigate any adverse impacts of the Traffic Effects and to ensure public safety; and
 - (b) use commercially reasonable efforts to maintain adequate public access to and use of the Road Allowances while Work is in progress and to remove the Traffic Effects as soon as reasonably possible following the completion of the Work.
- 4.3 Following the completion of any Work, the Proponent shall leave the Road Allowances in a neat, clean and safe condition and free from nuisance, to the extent they were in before the Work was undertaken, all to the satisfaction of the County acting reasonably. Where it is necessary to break, remove, or otherwise pierce the existing surface of any of the Road Allowances or any other municipal lands to undertake any Work, the Proponent shall in all cases repair, reinstate and restore such surface to the same condition that existed prior to the commencement of such Work.
- 4.4 The Proponent shall be responsible at all times for the repair, to the satisfaction of the County acting reasonably, of any damage to the travelled portion of Road Allowances caused by the Proponents' use. Any repairs undertaken shall restore the road surface to the same condition that existed immediately prior to the Proponent's use of the Road Allowances as provided in this Agreement. The Proponent shall, provided that the weather and weather-related conditions permit, complete these repairs within thirty (30) days of being notified by the County of the need for such repairs or within a shorter timeframe as specified by the County if the damage to the travelled portion of the road poses an immediate threat to safety in the sole opinion of the County. The Proponent shall be deemed to be released of all of its obligations pursuant to Section 4.3 and this Section 4.4 on the date which is fifteen (15) months following the Commercial Operation Date, save and except for any specific tasks or obligations of which the County, acting reasonably, has provided specific written notice to the Proponent prior to such date.
- 4.5 The Proponent agrees to make commercially reasonable efforts to rely on the County road maintenance staff where appropriate and when available, and the Proponent agrees to reimburse the County for the reasonable costs of any such work conducted by the County staff, including the County staff and supervisory time, materials and contracted services,

provided that the Proponent, acting reasonably, shall have pre-approved in writing the quantum of any such costs prior to the performance of such work by the County unless the work is of an emergency nature and the Proponent cannot reasonably be expected to attend and repair immediately, then the County agrees to conduct the necessary work to eliminate the imminent threat to the travelled road and the Proponent agrees to reimburse the County for the reasonable costs of the emergency work.

- 4.6 The Parties agree to provide each other with a list of twenty-four (24) hour emergency contact personnel, which shall be kept current, and to cooperate with each other and with local emergency services and Hydro One Networks Inc. to develop and adopt protocols applicable in the event of an Emergency involving the Electrical Infrastructure or the Work.
- 4.7 Notwithstanding any other provision of this Agreement, in the event of any Emergency involving the Work or Electrical Infrastructure, the Proponent shall notify the local emergency services immediately upon becoming aware of the situation and shall do all that is necessary and desirable to control the Emergency, including such Work in and to the Electrical Infrastructure or the Road Allowances as may be required. The Proponent shall be responsible for any Work in respect of the Electrical Infrastructure associated with such Emergencies howsoever caused, without prejudice to its right to claim indemnity from the County or from any third party for costs and expenses incurred in connection therewith by reason of the fault or negligence of the County or any third party, as the case may be.
- 4.8 Notwithstanding the foregoing, the Proponent shall not be required to carry out and shall not be responsible for any costs associated with any maintenance, repairs or restoration of the Road Allowances other than as set out in this Agreement.

5. Installation Work

- 5.1 Prior to the commencement of Installation Work, the Proponent shall file detailed Plans with the County not less than thirty (30) days prior to commencement of such Installation Work.
- 5.2 The County, acting reasonably and with diligence, shall review the Plans within fifteen (15) days of receipt of the Plans from the Proponent and either approve the Plans or advise the Proponent in writing of any modifications or amendments to the Plans that the County may seek and the reasons therefor. During its review of the Plans the County shall be entitled to take into consideration any specific municipal or engineering interests affected by the Plans. If modifications to the Plans are necessary, the Proponent shall revise and re-submit. The County shall, acting reasonably and with diligence, review and respond to the revised Plans within fifteen (15) days of receipt of the revised Plans from the Proponent.
- 5.3 The Proponent shall not proceed with the Installation Work before receiving:
 - (a) written approval of the Plans from the County, which approval shall not be unreasonably delayed, conditioned or withheld; and

- (b) approval to proceed with the Installation Work from any other Public Authority having jurisdiction over the Installation Work, to the extent that Applicable Law requires such approval prior to the commencement of Installation Work.
- 5.4 Prior to commencing Installation Work, the Proponent shall notify any other person, entity or body operating, to the knowledge of the Proponent, any equipment, installations, utilities or other facilities within the Road Allowances or in the immediate vicinity of the Road Allowances where Installation Work is to be conducted, of the details of the anticipated Installation Work, and consult with such other party so as to minimize the potential interference with or damage to such existing equipment, installations, utilities, and other facilities by the said Installation Work and so as to maintain the integrity and security thereof.
- 5.5 The Proponent shall commence, perform and complete the Installation Work in accordance with the Plans for such Installation Work approved by the County in all material respects.
- 5.6 In the event that physical features of the Road Allowances or other obstacles or circumstances frustrate the ability of the Proponent to complete the Installation Work in compliance in all material respects with the Plans approved by the County, or render compliance in all material respects with the Plans commercially unreasonable, the Proponent shall revise the relevant Plans and submit such revised Plans for review by the County. The County shall expedite the review of such revised Plans and shall not unreasonably condition or withhold its approval of such revised Plans.
- 5.7 The Proponent shall deposit as-built drawings and plans with the County within one hundred eighty (180) days after the Commercial Operation Date showing the location and specifications of any Electrical Infrastructure installed over, along, across, under or within the Road Allowances and the location and specifications of any Entrances constructed pursuant to this Agreement.

6. Electrical Work

- 6.1 The Proponent is currently planning to install Electrical Infrastructure within the Road Allowances identified in Schedule "A" and the County agrees that such Road Allowances shall be available for Electrical Infrastructure, subject to the County's approval of specific Plans as provided in Section 5.
- 6.2 Any Plans submitted by the Proponent in connection with Electrical Work shall identify the locations in which the Proponent proposes to install above-grade Electrical Infrastructure and shall set out the reasons therefor.
- 6.3 The Proponent further agrees to make commercially reasonable efforts to install the Electrical Infrastructure:
 - (a) in appropriate locations between the outer limit of the travelled portion of the relevant Road Allowance and the property line of the Road Allowance;

- (b) at appropriate depths and/or elevations within the relevant Road Allowance so as to minimize potential conflicts with other existing infrastructure; and
- (c) in consistent locations within the Road Allowances such that the number of road crossings is minimized.

6.4 The Proponent agrees at its sole expense to:

- (a) mark the location of Electrical Infrastructure installed by the Proponent within the Road Allowances with appropriate markings;
- (b) participate in the “Ontario One Call” system to facilitate ongoing notice to the public of the location of the Electrical Infrastructure; and
- (c) upon request of the County through its officials or authorized agents, or otherwise, properly and accurately identify the location of any Electrical Infrastructure within the Road Allowance, such reports to identify the depth of the relevant portion of the Electrical Infrastructure, such request to be made in writing to the Proponent with advance notice of fifteen (15) days prior to the County or a third party commencing work that may conflict with the Electrical Infrastructure.

6.5 The Parties agree and acknowledge that the Proponent shall from time to time be entitled to relocate installed Electrical Infrastructure or Entrances on its own initiative by complying with the terms of this Agreement respecting Installation Work, with the necessary modifications.

6.6 The County shall not install or grant rights to any third party to install any infrastructure within 1 metre on either side of the Electrical Infrastructure installed by the Proponent in the Road Allowance. The County shall not install or grant rights to any third party to install any infrastructure within 3 metres on either side of the Electrical Infrastructure installed by the Proponent in the Road Allowance without coordinating with the Proponent.

6.7 In the event that the County, acting reasonably and with diligence and a *bona fide* municipal purpose, deems it necessary for the County or the County’s agents or contractors to modify or change the location of any part of the installed Electrical Infrastructure or Entrances (the “**Relocation**”), the required Installation Work shall be conducted by the Proponent, within a reasonable period of time of the County’s written request therefore, in accordance with the terms of this Agreement respecting Installation Work, and subject to Sections 6.7 to 6.10, the County shall reimburse the Proponent 100% of its costs of such modifications or relocations during the initial ten (10) years after the date that the County has approved the applicable Plan pursuant to Section 5.3 and one-half (50%) of its costs of such modifications or relocations for the remainder of the term of this Agreement.

6.8 If the provisions of Section 6.7 are triggered as a result of the County’s compliance with a legislative requirement, Ministerial order or other law or order of a body which has the ability to force the County to act, then the Proponent shall bear one hundred percent (100%) of the costs of the alteration or relocation of the installed Electrical Infrastructure.

- 6.9 In the event that the County, acting reasonably and with diligence, deems it necessary to modify the conceptual design of the future Haldimand County Sanitary or Water Transmission Lines along Haldimand Road 55 (as shown in Schedule “C”) to accommodate the Electrical Infrastructure, the Proponent will bear 100% of the increase in cost resulting solely from such modification or relocation.
- 6.10 In the event that the County, acting reasonably and with diligence and a *bona fide* municipal purpose, deems it necessary that installed Electrical Infrastructure or Entrances be modified or relocated by a third party (“**Third Party Work**”), the required Installation Work shall be conducted by the Proponent in accordance with the terms of this Agreement respecting Installation Work, and the full costs of such Installation Work shall be borne solely by the third party. The County agrees to give the Proponent sixty (60) days’ notice of the need for any such Third Party Work and to require that the relevant third party or parties bear the full cost of the Proponent’s Installation Work and indemnify the Proponent against all claims and liabilities arising from the required Installation Work as a condition precedent to any grant, permit or approval from the County for the Third Party Work.
- 6.11 Notwithstanding anything to the contrary contained herein, the County agrees to obtain the Proponent’s prior approval to any relocation or modification of the Proponent’s Electrical Infrastructure to the extent such Electrical Infrastructure is comprised of underground wires under this Article 6 if and to the extent the effect of such relocation or modification would, in the Proponent’s opinion acting reasonably, require the Proponent to use above-ground wires rather than underground wires.

7. **Repair Work**

- 7.1 The Proponent shall be entitled to conduct Repair Work without prior approval of the County provided that:
- (a) all Repair Work complies with the requirements of Sections 4 and 9 of this Agreement; and
 - (b) except in cases of Emergency, the Proponent gives at least five (5) days’ notice to the County that Repair Work will occur if such Repair Work:
 - (i) will have or is likely to have Traffic Effects;
 - (ii) will involve or is likely to involve Tree Work as defined hereinafter; or
 - (iii) could present a danger to public health and safety.

8. **Entrances and Entrance Work**

- 8.1 Subject to the limitation in Section 8.2 below, the County agrees to clear snow from and otherwise maintain and repair the Road Allowances identified in Schedule “A” so as to permit adequate vehicular access from the Road Allowances to the Entrances.

- 8.2 To the extent that the County as of the Effective Date does not routinely clear snow from or otherwise maintain adequate vehicular access to and from Road Allowances not identified in Schedule "A", the County is not obliged to begin doing so unless and until the Parties acting reasonably agree in writing on reasonable compensation to be paid by the Proponent to the County for undertaking such additional snow clearance and maintenance work. Upon reaching such an agreement, Schedule "A" hereto shall be amended to identify the additional Road Allowances that the County agrees to maintain pursuant to Section 8.1 of this Agreement.
- 8.3 The County confirms and acknowledges that to the extent it approves Entrance Work, any new Entrance constructed by the Proponent pursuant to this Agreement shall be considered part of the Road Allowances.

9. Tree Work

- 9.1 In the event that the Proponent, acting reasonably, deems it necessary for purposes of undertaking and completing Work, to cut, trim, remove, destroy or otherwise control any or all trees, bushes or brush now or hereafter standing or growing in the Road Allowances, the Proponent shall be entitled to conduct the necessary Tree Work provided the Proponent makes reasonable efforts to minimize the amount of Tree Work. In the event that trees are removed from within the Road Allowances, the Proponent agrees, at its sole expense, to remove the tree stump to a level below grade and to restore and remediate the surface of the Road Allowance in accordance with Section 4.4 of this Agreement.
- 9.2 In the event that Tree Work involves removal of trees from the Road Allowance, the Proponent shall offer, in writing, to the adjacent landowner a choice to either replace such trees, at the Proponent's sole expense, to a location outside of the Road Allowance and a minimum of 8 metres from the Electrical Infrastructure, or a reasonable payment equivalent to the cost of replacing such trees. Any replacement shall be conducted in accordance with the following protocol:
- (a) Trees below 7.5 cm dbh (diameter at breast height) will not be replaced;
 - (b) Trees 7.5 cm dbh or greater but less than 15 cm dbh will be replaced at a ratio of two (2) trees for each tree removed;
 - (c) Trees 15 cm dbh or greater but less than 30 cm dbh will be replaced at a ratio of three (3) trees for each tree removed; and
 - (d) Trees greater than 30 cm dbh will be replaced at a ratio of five (5) trees for each tree removed.
- 9.3 Written offers to replace trees pursuant to Section 9.2 of this Agreement shall include a schedule of available tree species, and landowners receiving such offers shall be entitled to select from this schedule the tree species or mix of tree species that they wish to receive as replacement trees.

9.4 In the event that an affected landowner does not wish to receive replacement trees, the Proponent may, in its sole discretion, offer such trees to other neighbouring landowners or may cooperate with the County to find suitable alternative locations for such trees within the Municipality.

10. Abandonment and Decommissioning of Electrical Infrastructure

10.1 The Parties agree that the Proponent may from time to time during the Term of this Agreement, permanently discontinue the use of (“Abandon”) all or any part of the Electrical Infrastructure. The Proponent shall give written notice of any Abandonment to the County within sixty (60) days of such Abandonment, specifying the part of the Electrical Infrastructure that has been Abandoned.

10.2 If the Proponent Abandons any part or all of the Electrical Infrastructure, the Proponent shall have the right to remove such part of its Electrical Infrastructure as has been Abandoned, but if the Proponent does not remove the Electrical Infrastructure that has been Abandoned, the Proponent shall deactivate all Abandoned Electrical Infrastructure and certify to the County that such Electrical Infrastructure has been deactivated within sixty (60) days of its Abandonment. If the location of any such Abandoned Electrical Infrastructure interferes with the location of any construction, alteration, work or improvement undertaken by the County, the County may remove and dispose of so much of the Abandoned and deactivated part of the Electrical Infrastructure as the County may require for such purposes and neither Party shall have recourse against the other for any loss, expense or damages occasioned thereby.

10.3 Within one hundred and eighty (180) days after the Proponent Abandons any Electrical Infrastructure, the Proponent shall consult with the County in good faith to come to an agreement with respect to removing such Electrical Infrastructure or leaving it in place within the Road Allowances. Notwithstanding the foregoing, the County agrees that any Abandoned Electrical Infrastructure buried at a depth of more than three (3) feet below the surface may be left in place. Any Abandoned Electrical Infrastructure that is finally left in place upon the completion of decommissioning shall become the property of the County.

11. Assignment

11.1 The Proponent may not assign this Agreement without the written consent of the County, which shall not be unreasonably withheld, conditioned or delayed, except that no consent shall be required for the Proponent to assign this Agreement to an affiliated or successor entity, or for purposes of securing indebtedness or other obligations respecting the Electrical Infrastructure or the Project, provided that the Proponent has given notice to the County. The County acknowledges that a change in control of the Proponent shall not be considered an assignment by the Proponent of this Agreement or of any of the Proponent's rights and obligations under this Agreement.

11.2 For greater certainty, the Proponent shall from time to time during the term of this Agreement be entitled to assign this Agreement and all of its rights hereunder without the consent of the County to any Secured Party as security for the Proponent's obligations to

such Secured Parties, which shall be further entitled to assign this Agreement and the Proponent's rights thereunder in connection with an enforcement of their security. The County hereby agrees to execute and deliver, from time to time, an Acknowledgement and Consent Agreement containing, amongst other things, those rights set out in Schedule "D", in favour of any applicable Secured Party or assignee thereof, in a form acceptable to the County and the Secured Party, acting reasonably. For greater certainty, the County hereby grants to any Secured Party the rights and remedies set forth in Schedule "D" hereto.

- 11.3 The Proponent shall be entitled, with the written consent of the County, which may not be unreasonably delayed, withheld or conditioned, to assign this Agreement to a transferee of the Project other than an affiliated or successor company, and the Proponent shall thereupon be released from any and all obligations under this Agreement from and after the date of such assignment, provided that such assignee has agreed in writing with the County, in a form acceptable to the assignee and the County, both acting reasonably, to be bound by the provisions of this Agreement from and after the date of the assignment.
- 11.4 For an assignment which requires the County's consent under Section 11.1, the Proponent shall furnish to the County, upon request, all information reasonably available to the Proponent relating to the corporate relationship, responsibility, reputation and financial standing of the proposed assignee.

12. Default

- 12.1 If a Party materially breaches or omits to comply with any of the provisions of this Agreement (the "**Defaulting Party**"), the other Party (the "**Complainant**") may give the Defaulting Party at least twenty-four (24) hours' notice in writing specifying the breach complained of and indicating the intention of the Complainant to terminate this Agreement unless the Defaulting Party shall have remedied the breach within the period mentioned in the notice, which period shall be not less than sixty (60) days. If the Defaulting Party shall have within such notice period commenced to remedy the breach and has diligently pursued the remedying thereof, the Defaulting Party shall be allowed one hundred and fifty (150) days after the expiry of the original notice period to remedy the breach. After the expiration of the later of the applicable periods, the Complainant may elect to terminate this Agreement or to remedy the breach, in which case the Defaulting Party shall be liable for reimbursing to the Complainant the reasonable costs of completing said remedy. Upon notice of termination by the County, the Proponent shall assist the County in assuming full operation and occupation of the Road Allowances and will return the travelled portion of the Road Allowance to the County in materially the same or better condition as it was upon the Effective Date of this Agreement, ordinary wear and tear excepted. However, for greater certainty, the Proponent shall not be required to remove any buried Electrical Infrastructure in the event this Agreement is terminated by the County.
- 12.2 Whenever, and to the extent that a Party will be unable to fulfil or will be delayed or restricted in the fulfillment of any obligation under any provision of this Agreement by reason of:
- (a) strikes;

- (b) lock-outs;
- (c) war or acts of military authority;
- (d) rebellion or civil commotion;
- (e) material or labour shortage not within the control of the affected Party;
- (f) fire or explosion;
- (g) flood, wind, water, earthquake, or other casualty;
- (h) changes in Applicable Law not wholly or mainly within the control of the affected Party, including the revocation by any Public Authority of any permit, privilege, right, approval, license or similar permission granted to the Proponent or the Project;
- (i) any event or matter not wholly or mainly within the control of the affected Party (other than lack of funds or the financial condition of the affected Party); or,
- (j) acts of God,

(in each case a “**Force Majeure**”)

not caused by the default or act of or omission by that Party and not avoidable by the exercise of reasonable effort or foresight by it, then, so long as any such impediment exists, that Party will be relieved from the fulfillment of such obligation and the other Party will not be entitled to compensation for any damage, inconvenience, nuisance or discomfort thereby occasioned. A Party shall promptly notify the other Party of the occurrence of any Force Majeure, which might prevent or delay the doing or performance of acts or things required to be done or performed.

13. Dispute Resolution

- 13.1 In the event that either Party provides the other Party with written notice of a dispute regarding the interpretation or implementation of this Agreement (a “**Dispute**”) then both Parties shall use their best efforts to settle the Dispute by consulting and negotiating with each other in good faith to reach a solution satisfactory to both Parties. However, if the Parties do not resolve the Dispute within thirty (30) days following receipt of such notice, then either Party may provide written notice to the other Party (the “**Arbitration Notice**”) requiring resolution by arbitration and thereafter the Dispute shall be referred to arbitration in accordance with the provisions of the *Arbitration Act, 1991*.
- 13.2 The arbitration tribunal shall consist of one arbitrator appointed by mutual agreement of the Parties or, if the Parties fail to agree on an arbitrator within ten (10) days after receipt of the Arbitration Notice, then either Party may apply to a judge of the Superior Court of Justice to appoint an arbitrator. The arbitrator shall be qualified by education and training to pass upon the matter to be decided.

- 13.3 The arbitration shall be conducted in English and shall take place in the Municipality or another place mutually agreed upon by the Parties.
- 13.4 The arbitration award shall be given in writing and shall address the question of costs of the arbitration and all related matters. The arbitration award shall be final and binding on the Parties as to all questions of fact and shall be subject to appeal only with respect to matters of law or jurisdiction.
- 13.5 Except to the extent that a matter is specifically the subject of a Dispute, both Parties shall continue to observe and perform the terms and conditions of this Agreement pending the resolution of a Dispute.

14. Further Assurances

- 14.1 Each of the Parties covenants and agrees with the other that it will at all times hereafter execute and deliver, at the request of the other, all such further documents, agreements, deeds and instruments, and will do and perform all such acts as may be necessary to give full effect to the intent and meaning of this Agreement.

15. Liability

- 15.1 The Proponent hereby acknowledges that its performance of the Work and operation of the Electrical Infrastructure and Project is entirely at its own risk and the County shall in no way and in no circumstances be responsible or liable to the Proponent, its contractors, agents, or customers for any damage or losses in consequence thereof, regardless of how such damage or loss was suffered or incurred, other than damage or loss arising out of the negligence of, intentional misconduct of, or a breach of this Agreement by the County, anyone directly or indirectly employed by the County or anyone for whose acts the County is in law responsible.
- 15.2 The Proponent will indemnify, defend and save harmless the County from and against all claims, liabilities, losses, costs, damages or other expenses of every kind that the County may incur or suffer as a consequence of or in connection with the performance of the Work, the exercise of the Proponent's rights under this Agreement, or the breach of the Proponent's obligations under this Agreement resulting from, or attributable to the Proponent or those for whom it is in law responsible, while engaged in the placing, maintenance, operation or repair of the Electrical Infrastructure or any part thereof, except to the extent that such claims, liabilities, losses, costs, damages or other expenses result from the fault or negligence of the County or those for whom it is legally responsible.
- 15.3 This Article 15 shall survive the termination or expiry date of this Agreement with respect to actions or omissions which occurred prior to such termination or expiry.

16. Notice

- 16.1 All notices, communications and requests for approval which may be or are required to be given by either party to the other herein shall be in writing and shall be given by delivery

by courier or by facsimile addressed or sent as set out below or to such other address or facsimile number as may from time to time be the subject of a notice:

To the County:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

With a copy to:

[Address]

Attention: [•], [TITLE]

Facsimile:

Emergency Telephone No.:

To the Proponent: Nanticoke Solar Limited Partnership
700 University Avenue, H18
Toronto, Ontario
M5G 1X6

Attention: Director, Corporate Business Development
Email: anthony.zlahtic@opg.com
Emergency Telephone No.:

With a copy to:

Law – Ontario Power Generation
700 University Avenue, H18
Attention: Law
Emergency Telephone No.:

- 16.2 Any notice, if delivered by courier, shall be deemed to have been validly and effectively given and received on the date of such delivery and if sent by facsimile or e-mail with confirmation of transmission, shall be deemed to have been validly and effectively given and received on the day it was received, whether or not such day is a business day.

17. Governing Law

- 17.1 This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario.

18. Miscellaneous

- 18.1 This Agreement may be executed by facsimile or PDF transmission and in one or more counterparts, all of which shall be considered one and the same Agreement.
- 18.2 This Agreement and the rights granted hereunder are and shall be of the same force and effect, to all intents and purposes, as a covenant running with the Road Allowances and these presents, including all of the covenants and conditions herein contained, shall extend, be binding upon and enure to the benefit of the County and the Proponent, and their respective successors and permitted assigns, as the case may be.
- 18.3 Each obligation of the Parties contained in this Agreement, even though not expressed as a covenant, is considered for all purposes to be a covenant.
- 18.4 The invalidity or unenforceability of any provision or covenant contained in this Agreement shall affect the validity or enforceability of such provision or covenant only and any such invalid provision or covenant shall be deemed to be severable from the balance of this Agreement, which shall be enforced to the greatest extent permitted by law.
- 18.5 Each covenant in this Agreement is a separate and independent covenant and a breach of covenant by either Party will not relieve the other Party from its obligation to perform each of its covenants, except as otherwise provided herein.
- 18.6 No supplement, modification, amendment, or waiver of this Agreement shall be binding unless executed in writing by the Parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives to be effective as of the Effective Date.

**THE CORPORATION OF HALDIMAND
COUNTY**

Name:
Title

Name:
Title:

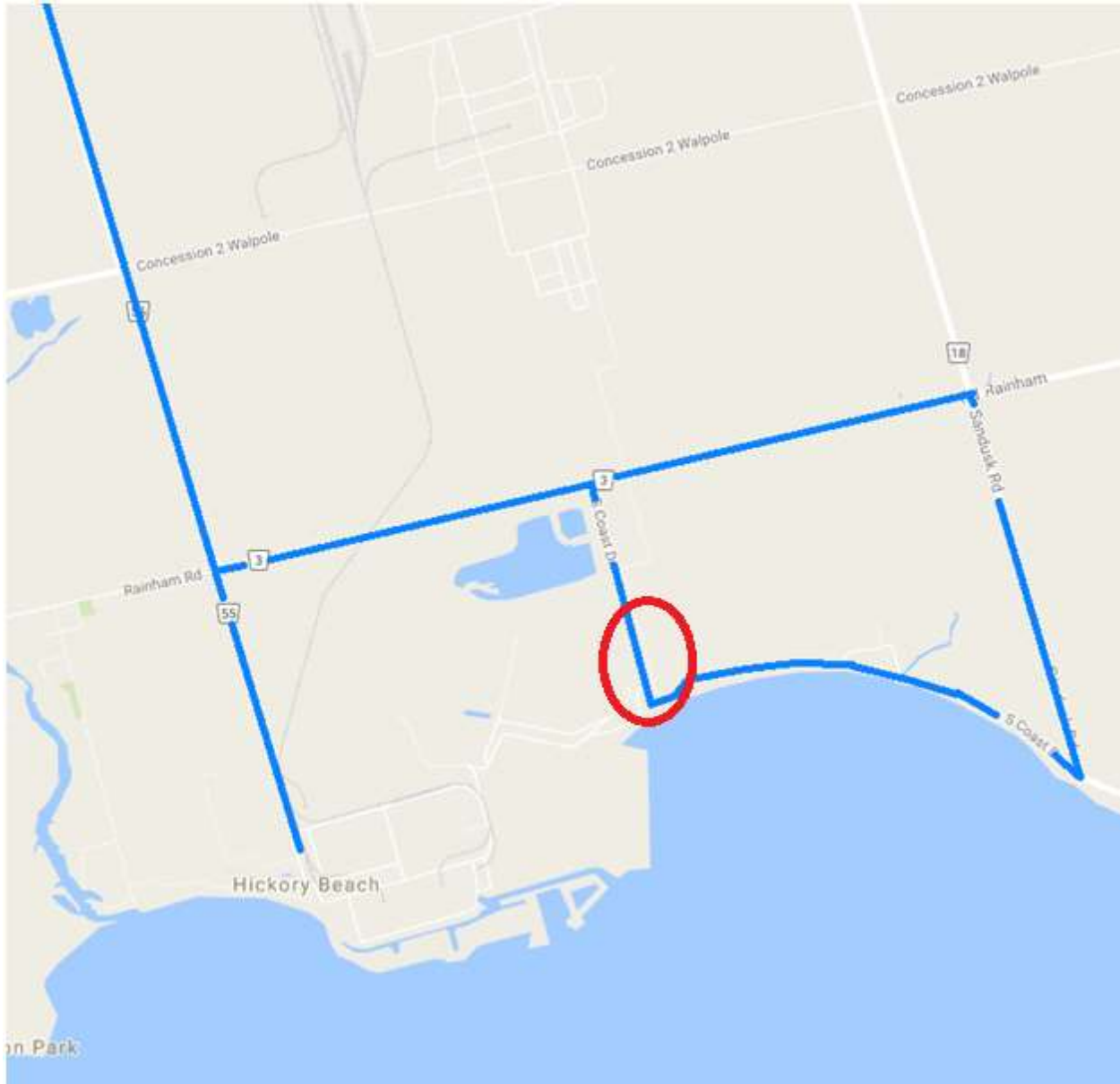
**NANTICOKE SOLAR LP, by its general
partner, NANTICOKE SOLAR INC.**

Name:
Title:

SCHEDULE "A"

Road Allowances identified by solid dark line may be required for Deliveries, Entrance Work and Entrances only.

Road Allowances within the solid dark oval may be required for all Work and Electrical Infrastructure.



SCHEDULE "B"

The Permits

Permit	Requirements	Fee (2017 rates)
Entrance Permit	One permit for each entrance to county road.	\$167.00
Excavation / Occupancy Permit	One blanket permit for length of project.	\$214.00
Oversized and Moving Permit	One permit per oversized load.	\$100.00

SCHEDULE "C"

Conceptual Design of the Future Haldimand County Sanitary or Water Transmission Lines

[NTD: To be inserted by Haldimand County]

SCHEDULE "D"

Rights and Remedies Afforded to Secured Parties

1. The County will from time to time execute and deliver such consents and acknowledgements reasonably requested by the Secured Party.

2. The County agrees that, upon the Secured Party giving the County written notice of any security granted by Proponent in the Agreement, the Secured Party will, without any further action being required, have the benefit of the following provisions until such time as the Secured Party advises the County in writing that its security is no longer in effect (and, if the Secured Party so requests, the County will (i) acknowledge in writing that the Secured Party so benefits from these provisions, or (ii) enter into a written agreement with the Secured Party substantially in accordance with these provisions):

- (a) the County will give prompt written notice to the Secured Party of any breach or default by Proponent of its obligations under the Agreement in respect of which the County proposes to exercise any of its remedies;
- (b) the County will give the Secured Party the right to cure any breach or default by Proponent under the Agreement, within a period of 90 days commencing on the later of (i) the expiry of the cure period afforded Proponent under the Agreement, and (ii) the date on which the County gives the Secured Party notice of such breach or default pursuant to Section 2(a), or such longer period of time as the Secured Party may reasonably require to cure such breach or default; and no exercise by the County of any of its rights or remedies against Proponent will be effective against Proponent or the Secured Party unless the County has provided the Secured Party such notice and opportunity to cure.
- (c) the County will, at any time and from time to time, upon not less than ten (10) days' prior request by Proponent or the Secured Party or proposed the Secured Party, execute any agreements, certificates or acknowledgements that Proponent or the Secured Party may reasonably request with respect to this Agreement; and
- (d) all notices to the Secured Party from the County will be in writing and will be sent by personal delivery, registered mail, email or by fax to the address, email address or facsimile number of the Secured Party set out in any notice that the Secured Party delivers to the County.

3. The provisions of Section 2 will enure to the benefit of the Secured Party and its successors and assigns, and any rights conferred on the Secured Party by the terms of this Schedule "D" or limiting its liability under the Agreement will benefit each receiver or receiver-manager appointed by the Secured Party or by a court of competent jurisdiction.

4. The County hereby acknowledges that Proponent may grant security to a trustee or collateral agent acting on behalf of one or more lenders (a "**Collateral Agent**"), and the County

hereby acknowledges and agrees that upon its receipt of notice that such security was granted, the Collateral Agent will be entitled to all of the rights of the Secured Party set forth in this Schedule "D" and such notice will constitute notice of the existence of the Collateral Agent as the Secured Party.