

SCHEDULE "A"

**To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater
Sudbury**

THE CITY OF GREATER SUDBURY**SHAREHOLDER DECLARATION****FOR****GREATER SUDBURY UTILITIES INC.****1. Definitions and Purpose**

- 1.1. Definitions - In this Shareholder Declaration, defined terms have the meanings set out in Appendix "A" attached hereto.
- 1.2. Purpose - This Shareholder Declaration outlines the expectations of the Shareholder relating to the principles of governance and other fundamental principles and policies of the Corporation and in some cases, the Subsidiaries. Except as provided in Sections 6 and 9, this Shareholder Declaration is not intended to constitute a unanimous shareholder declaration under the OBCA or to formally restrict the exercise of the powers of the Board or the board of directors of any Subsidiary.

2. Permitted Business Activities

- 2.1. Subject to the restrictions in Section 9, the Corporation and the Subsidiaries may engage in the business activities which are permitted by any law applicable to the Corporation and the Subsidiaries from time to time, including the *Electricity Act*, and as the Board or board of directors of the Subsidiaries may authorize, including, without limitation, the business activities referred to in Subsection 2.2. In so doing, the Corporation and its Subsidiaries shall conform to all requirements of the Ontario Energy Board, the Independent Electricity System Operator and all other applicable regulatory or governmental authorities.
- 2.2. The Corporation or one or more Subsidiaries may engage in any of the following business activities and such other business activities as may be permitted by law and authorized by the Board or board of directors of any Subsidiary, as applicable, from time to time:
 - 2.2.1. Transmitting or distributing electricity;
 - 2.2.2. Owning and/or operating an electricity generation or energy storage facility;
 - 2.2.3. Retailing electricity;

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- 2.2.4. Distributing or retailing gas or any other energy products which is carried through pipes or wires to the user;
- 2.2.5. Business activities that enhance or develop the ability of the corporation to carry any of the activities described in Subsections 2.2.1, 2.2.2, 2.2.3, and 2.2.4 above;
- 2.2.6. Business activities the principal purpose of which is to use more effectively the assets of the Corporation or any Subsidiary, as applicable, including providing meter installing, and reading services, and providing billing services and business activities in the utilities and telecommunications area;
- 2.2.7. Renting, selling or maintaining equipment and appliances, including without limitation, hot water heaters;
- 2.2.8. Managing or operating, on behalf of the Shareholder, the provision of a public utility or sewage services; and
- 2.2.9. Providing services related to improving energy efficiency.

3. Standards of Governance

- 3.1. As required by the OBCA, the Board and the boards of directors of any Non-regulated Subsidiary shall supervise the management of the business and affairs of the Corporation and any Non-regulated Subsidiary, respectively, and in so doing, shall act honestly and in good faith with a view to the best interests of the Corporation or the Non-regulated Subsidiary, respectively, and shall exercise the same degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.
- 3.2. In addition, the Shareholder expects the Board and the boards of directors of the Non-regulated Subsidiaries to observe substantially the same standards of corporate governance as may be established from time to time by any applicable regulatory or governmental authority in Canada for publicly traded corporations. The Board and boards of directors of the Non-regulated Subsidiaries are also expected to consider and adopt, as appropriate, recognized sources of governance best practices.
- 3.3. The Board will establish a Shareholder Declaration in respect of Greater Sudbury Hydro Inc., which shall set out the expectations of the Corporation, as the

Comment [KG1]: GSU's proposed wording here is connected to the proposal to have more independent board members than councillors on the Board, specifically 4.1.1.

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shareholder of Greater Sudbury Hydro Inc., relating to the governance principles and policies of Greater Sudbury Hydro Inc.

4. Board of Directors

- 4.1. Number of Directors - The Corporation shall be governed by the Board which shall consist of a maximum of twelve Directors to be appointed by the Shareholder. The Shareholder shall, by special resolution, or by Shareholder Declaration, designate the number of members of the Board to hold office from time to time. Accordingly, the number of Directors for the Board shall be as follows:

- 4.1.1. The Board of the Corporation shall be comprised of five individuals which shall include three City Directors and two Independent Directors, all appointment by Council.

The City Directors may include the Mayor or members of Council. The Independent Directors may not be members of Council, City employees or Corporation employees. The directors of GSUI shall also serve as directors on the Boards of the Non-regulated Subsidiary corporations: Greater Sudbury Hydro Plus Inc., Greater Sudbury Telecommunications Inc., Convergence Inc., and 1627596 Ontario Inc.

- 4.1.2. The Shareholder may remove a Director for cause and appoint a new Director in their place.

- 4.1.3. If a Director misses three regularly scheduled meetings of the Board in a twelve month period without prior approval, they shall be deemed to have resigned and their position deemed vacant.

- 4.1.4. All Directors shall remain on the Board(s) until their successors are appointed. This provision shall include the Mayor and municipal councillors, even if their terms on City Council have terminated.

- 4.2. Qualification of Directors - In addition to sound judgment and personal integrity, the qualifications of candidates for the Board will be identified by the Corporation from time to time using a Board Skills Matrix with a gap analysis, including experience and skills such as:

- 4.2.1. Awareness of public policy issues related to the Corporation or a Subsidiary, as applicable;

Comment [KG2]: GSU proposes the Board comprise 7 not 5 members – 4 independent directors and 3 councillors.

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- 4.2.2. Business expertise (including retail experience);
 - 4.2.3. Experience on boards of commercial corporations;
 - 4.2.4. Financial, legal, engineering, IT, accounting and/or marketing experience;
 - 4.2.5. Regulated industry knowledge including, but not limited to, knowledge of municipal electric utilities; and
 - 4.2.6. Knowledge and experience with risk management strategy.
- 4.3. Residency - Preference may be given to qualified candidates for the Board who are residents of the City of Greater Sudbury or of the Municipality of West Nipissing, however, non-residents shall not be excluded from serving as Board members.
- 4.4. Chair and Vice-Chair Position - The Board may elect its own Chair and Vice-Chair
- 4.5. Board Committees - The Board may establish committees of the Board at its discretion The Shareholder anticipates that the Board may establish the following committees:
- 4.5.1. Audit and Finance Committee to oversee financial reporting and associated policies and practices;
 - 4.5.2. Human Resources, Governance and Nominating Committee to oversee senior management compensation, evaluation and succession, corporate governance policies and practices, and to identify, evaluate and recommend potential Independent Director Board candidates to the Shareholder.
- 4.6. Independent Director Nominations - The Shareholder shall consider candidates for the Board nominated by the Human Resources, Governance and Nominating Committee. It is expected that the committee will develop a process that takes into account the qualifications identified in the Board Skills Matrix (4.2) to identify, evaluate and recommend the most qualified candidates to the Shareholder.
- 4.7. Appointment of Directors - In selecting the directors to be appointed to the Board, the Shareholder shall take into account the qualifications identified in the Board Skills Matrix (4.2) and the candidates nominated by the Human Resources, Governance and Nominating Committee.

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- 4.8. Meetings of the Board - If requested by the Shareholder, the Board shall invite certain employees of the City, identified by the Shareholder, to attend meetings of the Board and meetings of the boards of the Non-regulated Subsidiaries. Such City employees shall not be entitled to vote on any matter. A majority of the number of directors required by this Shareholder Declaration constitutes a quorum at any meeting of the Board or meeting of the boards of the Non-regulated Subsidiaries.

5. Financial Policies, Risk Management and Strategic Plan

- 5.1. Policies - The Shareholder expects that the Board will develop and maintain policies consistent with best practices in corporate governance, including:
- 5.1.1. Capital Structure - a prudent financial and capitalization structure for the Corporation and its Subsidiaries consistent with industry norms and sound financial principles, established on the basis that the Corporation and its Subsidiaries are intended to be self-financing entities;
 - 5.1.2. Dividends - a policy relating to enhancing Shareholder value by generating a reasonable return consistent with a prudent financial and capitalization structure and maintaining just and reasonable rates, while providing for dividends to be paid to the Shareholder from the Corporation, as set out in Policy No. F-13, as may be amended from time to time;
 - 5.1.3. Risk Management - oversee the management of all risks related to the business conducted by the Corporation and its Subsidiaries, through the adoption of appropriate risk management strategies and internal controls consistent with industry norms;
 - 5.1.4. Strategic Plan - a long range strategic plan for the Corporation and its Subsidiaries which is consistent with the maintenance of a viable, competitive business and preserves the value of the business for the Shareholder;
 - 5.1.5. Directors' Compensation - to set remuneration levels of board members of the Corporation and its Non-regulated Subsidiaries, using independently researched comparator benchmarks; and
 - 5.1.6. Environmental Policy - a long range environmental policy which provides that the Corporation and its Subsidiaries operate in a safe and environmentally responsible manner.

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5.1.7. Borrowing Policy – in the event that the Corporation or its Subsidiaries require fixed term borrowing in excess of \$100,000 at a time, the Corporation shall obtain quotes from various external lenders. Prior to accepting a quote, the Corporation shall provide a copy of the quote to the Shareholder's CAO and give the Shareholder an option to lend the funds to the Corporation on the same terms and conditions as the external lender's quote. In the event that the Shareholder wishes to exercise its option, it shall inform the CEO of the Corporation in writing within 10 business days, failing which the Corporation shall be free to borrow from the external lender.

6. Decisions of the Shareholder and Shareholder Representatives

- 6.1. The Shareholder hereby designates the Mayor and the City Clerk as the legal representatives of the Shareholder (the "Shareholder Representative") for purposes of communicating to the Board pursuant to Subsection 6.2 any consent or approval required by this Shareholder Declaration or by the OBCA otherwise.
- 6.2. Approvals or decisions of the Shareholder required pursuant to this Shareholder Declaration or the OBCA shall require a resolution or by-law of Council and shall be communicated in writing to the Board and signed by the Shareholder Representative.

7. Meetings and Annual Resolution

- 7.1. The Shareholder shall receive notification of all meetings of the Board of Directors of the Corporation and any Subsidiary and a copy of the agenda for the meeting.
- 7.2. Within six months after the end of each fiscal year of the Corporation
- 7.2.1. Annual Report to Meeting of Council - the Board shall report to a meeting of Council and the President and CEO of the Corporation shall attend such meeting and provide such information concerning the Corporation and its Subsidiaries as is appropriate.
- 7.2.2. Annual Resolutions:
- 7.2.2.1. The Shareholder shall consider candidates for the Board as proposed by the Nominating Committee and the appointment of the auditors of

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the Corporation and receive the audited financial statements of the Corporation for the last completed fiscal year; and

- 7.2.2.2. The Shareholder shall appoint the necessary members of the Board and appoint the auditors for the Corporation and complete such other business as would normally be completed at an annual meeting of shareholder under the OBCA.

8. Reporting on Major Developments

- 8.1. The Board shall from time to time report to Council on major business developments or materially significant or adverse results as the Board, in its discretion, considers appropriate and such report may be received and considered by the Shareholder at an open or in camera meeting of Council.
- 8.2. The Board shall provide to the Shareholder any and all records of the Corporation or the Subsidiaries within a reasonable period of time of the Shareholder's written request for same.

9. Matters Requiring Shareholder Approval

- 9.1. Without Shareholder approval given in accordance with Section 6, the Corporation or any Subsidiary, respectively, shall not:

Statutory Approval Right

- 9.1.1. Change the name of the Corporation or a Subsidiary; add, change or remove any restriction on the business of the Corporation or a Subsidiary; create new classes of shares; or in any other matter amend its articles of incorporation or make, amend or repeal any by-law;
- 9.1.2. Amalgamate with any other corporation(s), other than amalgamations that may under the OBCA, be approved by a resolution of directors;
- 9.1.3. Take or institute proceedings for any winding up, arrangement, or dissolution of the Corporation or a Subsidiary;
- 9.1.4. Apply to continue as a corporation under the laws of another jurisdiction;

Additional Approval Rights

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- 9.1.5. 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 a Subsidiary;
- 9.1.6. Redeem or purchase any outstanding shares of the Corporation or a Subsidiary;
- 9.1.7. Take on or assume any financial obligation which would materially increase the debt/equity ratio of the Corporation and its Subsidiaries on a consolidated basis above the ratio of 60/40;
- 9.1.8. Sell assets of the Corporation or a Subsidiary or purchase assets with an aggregate value in excess of 15% of the Consolidated Book Value of all assets of the Corporation and its Subsidiaries;
- 9.1.9. Materially alter the nature of or geographic extent of the business of the Corporation or any of its Subsidiaries in a manner which would have a financial impact equal to or greater than 15% of the consolidated Book Value of all assets of the Corporation and its Subsidiaries;
- 9.1.10. Enter into a joint venture, partnership, strategic alliance or other venture, including ventures in respect of the generation or co-generation of electricity which would require an investment, or which would have a financial impact, equal to or greater than 15% of the consolidated Book Value of all assets of the Corporation and its Subsidiaries.

10. Revisions to this Declaration

- 10.1. The Shareholder shall review this Shareholder Declaration at least every five (5) years.
- 10.2. The Shareholder acknowledges that this Shareholder Declaration may be revised from time to time as circumstances may require and that the Shareholder will consult with the Board prior to completing any revision and will promptly provide the Board with copies of such revision.

11. This declaration replaces all earlier versions of the Declaration for the Corporation.

DATED at Sudbury, Ontario the [Insert Date] day of [Insert Date]

CITY OF GREATER SUDBURY

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**To By-law [INSERT NEW BYLAW NUMBER] of the City of Greater
Sudbury**

BY: _____
Brian Bigger, Mayor

BY: _____
Eric Labelle, Clerk

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APPENDIX "A"

DEFINITIONS AND INTERPRETATIONS

In this Shareholder Declaration the following defined terms have the meaning set out below:

"Act" means the Electricity Act, 1998 (Ontario);

"Board" means the board of directors of the Corporation;

"Chair" means the chair of the Board;

"City" means the City of Greater Sudbury;

"City Clerk" means the Clerk of the City of Greater Sudbury;

"Consolidated Book Value" of all assets of the Corporation and its Subsidiaries shall be the values reported in the audited consolidated financial statements of the corporation and its subsidiaries at the end of its most recently completed fiscal year;

"Corporation" means Greater Sudbury Utilities Inc. incorporated pursuant to Section 142 of the Act;

"Council" means the City Council of the City of Greater Sudbury;

"Debt" includes all debt obligations owed to third party creditors, but excludes all debt obligations owed to the Shareholder;

"Independent Directors" shall have the meaning set out in Section 4 of this Shareholder Declaration;

"Mayor" means the Mayor of the City of Greater Sudbury;

"Non-regulated Subsidiaries" means any subsidiary of the Corporation, except Greater Sudbury Hydro Inc.;

"OBCA" means the Business Corporations Act (Ontario);

"President and CEO" means the president and chief executive officer of the Corporation;

"Shareholder" means the City of Greater Sudbury;

"Shareholder Declaration" means this shareholder declaration;

"Shareholder Representative" shall have the meaning set out in Subsection 6.1;

"Subsidiaries" means the subsidiary corporations (as defined in the OBCA) of the Corporation; and

"Vice-Chair" means the vice-chair of the Board.

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