

Form of Tunnel Lease

Parties: Mackinac Straits Corridor Authority (“Authority”) and Enbridge Energy, Limited Partnership (“Enbridge”) (collectively “Parties”).

Recitals/Preamble:

- A. On October 3, 2018, the State of Michigan, the Michigan Department of Environmental Quality, and the Michigan Department of Natural Resources entered into an agreement (“Second Agreement”) that contemplated that Enbridge will enter into further agreements with the Authority to construct an underground tunnel (“Tunnel”) connecting the Upper and Lower Peninsulas to accommodate a replacement of that portion of Enbridge’s Line 5 pipeline (“Line 5”) that crosses the Straits of Mackinac (“Straits”) and to provide the potential to accommodate use by other third-party linear utilities (“Third-Party Utilities”).
- B. In accordance with the Second Agreement, the Authority and Enbridge entered into a “Tunnel Agreement” on December __, 2018, which provides that: (1) Enbridge will, at its expense, design, construct, operate and maintain the Tunnel; (2) Enbridge and the Authority will jointly obtain all Governmental Approvals and Permits required for the Tunnel; and (3) the Authority will (a) obtain certain rights in public property needed for construction and operation of the Tunnel, (b) authorize Enbridge to enter, use, and occupy such public property to construct the Tunnel and the Straits Line 5 Replacement Segment, (c) accept the transfer by Enbridge to the Authority of ownership of the Tunnel after it is constructed in accordance with agreed upon Technical Specifications, (d) concurrent with such transfer of ownership, issue a lease of the Tunnel to Enbridge, which authorizes Enbridge to operate and maintain the “Straits Line 5 Replacement Segment” within the Tunnel.
- C. The Authority and Enbridge hereby enter into this Lease pursuant to the Tunnel Agreement.

Article 1 Definitions and Interpretation

1.1. Definitions

- (a) **Applicable Laws** means any federal State or local statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive, or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision or determination by any Governmental Entity .
- (b) **Authority Property** means all real property held under easement by the Authority that is to be physically occupied by the Tunnel, including the Tunnel thereon that is leased to Enbridge in accordance with this Lease. The specific location, layout, and course of the Authority Property are set forth in Exhibit A. [This location will be determined during the

design phase of the Tunnel and is subject to adjustment to reflect minor changes made during the final design and construction process.]

- (c) **Claim** means any actual or threatened claim, proceeding, action, cause of action, demand or suit (including by way of contribution of indemnity).
- (d) **Deficiency** has the meaning set forth in Section 8.2
- (e) **Final Project Handback Condition Report** has the meaning set forth in Section 15.4.1.
- (f) **Governmental Approvals** means all permissions, consents, approvals, certificates, permits, licenses, agreements, registrations, notices, exemptions, waivers, filings and authorizations (whether statutory or otherwise) required to design, construct, and operate the Tunnel and the Straits Line 5 Replacement Segment.
- (g) **Governmental Entity** means the government of the United States of America, the State, the cities and counties within the State and any other agency, or subdivision of any of the foregoing, including any federal, state, or municipal government, and any court, agency, special district, commission or other authority exercising executive, legislative, judicial, regulatory, administrative or taxing functions of, or pertaining to, the government of the United States of America, the State or the cities and counties within the State.
- (h) **Handback Work** has the meaning set forth in Section 15.2.1(c).
- (i) **Handback Work Costs** has the meaning set forth in Section 15.2.1(c).
- (j) **Lease Commencement Date** has the meaning set forth in Section 5.2.
- (k) **Lease Expiration Date** has the meaning set forth in Section 5.3.
- (l) **Line 5** means the Enbridge light crude and natural gas liquids pipeline that extends from Superior, Wisconsin, through the Upper Peninsula of Michigan to the Lower Peninsula of Michigan and then across the U.S.-Canada international boundary to Sarnia, Ontario, Canada.
- (m) **Maintenance Reserve Account** has the meaning set forth in Section 10.8 of this Lease
- (n) **Notice** has the meaning given in Article 23 of this Lease.
- (o) **Project Handback Condition Report** has the meaning set forth in Section 15.2.1.
- (p) **State** means the State of Michigan.
- (q) **Straits Line 5 Replacement Segment** - means that segment of 30-inch pipe that is to be constructed, operated, and maintained within the Tunnel to connect to Enbridge's existing Line 5 pipeline on either side of the Straits so as to serve as a replacement to the Dual Pipelines.
- (r) **Tunnel** has the meaning set forth at the description provided at Section 6.1 of the Tunnel Agreement.
- (s) **Tunnel Agreement** means the agreement referenced in Recital (B) that was entered into by the Authority and Enbridge on ____, 2018 concerning the construction of the Tunnel.
- (t) **Tunnel O&M** means any and all management, administration, inspection, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement, including routine maintenance, necessary to achieve the Tunnel's 99-year design life, which includes the goods, equipment, and materials necessary for the operation as identified through the Tunnel design and construction process specified in Article 7 of the Tunnel Agreement. Tunnel O & M will be consistent with the Tunnel O & M Plan approved by the Authority under the Tunnel Agreement.

1.2 In this Lease unless the context otherwise requires:

- (a) the words “including”, “includes” and “include” will be read as if followed by the words “without limitation”;
- (b) the meaning of “or” will have the inclusive meaning represented by the phrase “and/or”;
- (c) a reference to any Party includes each of its successors, and permitted assigns, including any Person taking part by way of novation;
- (d) a reference to this Lease or to any other agreement, document, or instrument includes a reference to this Lease or such other agreement, document or instrument, as amended, revised, supplemented or otherwise modified from time to time;
- (e) a reference to any Governmental Entity, institute, association or body is: (i) if that Governmental Entity, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Government Entity, institute, association or body are transferred to another organization, a reference to the reconstituted, renamed or replaced organization or the organization to which the powers or functions are transferred, as applicable; and (ii) if that Governmental Entity, institute, association or body ceases to exist, a reference to the organization which serves substantially the same purposes or objectives as that Governmental Entity, institute, association or body;
- (f) words in the singular include the plural (and vice versa);
- (g) headings are for convenience only and do not affect the interpretation of this Lease;
- (h) a reference to this Lease includes all Schedules, Appendices and Exhibits;
- (i) a reference to an Article, Section, Schedule, Appendix or Exhibit is a reference to an Article or Section of or Schedule, Appendix or Exhibit to the body of this Lease;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;

Article 2 Representations

Authority- Signatories for each Party represent that they have authority to enter into this Lease.

Article 3 General

3.1 Enbridge shall comply with all Applicable Laws in operating and maintaining the Tunnel and the Straits Line 5 Replacement Segment in accordance with this Lease, and obtain all permits or permission necessary or required by law from cities, villages, townships, corporations, or individuals that are required for the Tunnel O&M.

3.2 Enbridge will not transport Heavy Crude Oil through the Straits Line 5 Replacement Segment.

3.3 When Enbridge ceases use of the Straits Line 5 Replacement Segment, it will permanently deactivate the Straits Line 5 Replacement Segment in compliance with all Applicable Laws.

Article 4 Lease; Use of Authority Property

4.1 The Authority hereby grants to Enbridge and Enbridge hereby accepts from the Authority a lease of the Tunnel. Enbridge shall use the Tunnel to: (i) perform the Tunnel O&M required under this Lease; (ii) construct, operate, maintain, inspect, protect, repair, use and remove the Straits Line 5 Replacement Segment. Such uses of the Tunnel shall be without charge by the Authority except as provided in this Lease.

4.2 This Lease is subject to the paramount needs of safely operating and maintaining the Tunnel to serve as a corridor for utilities that connect the upper and lower peninsulas of Michigan for the benefit of the State and without risk to the Straits of Mackinac.

4.3 Excluding the contents of the Straits Line 5 Replacement Segment, as well as its operation, maintenance, repair, and removal, Enbridge will not use or store radioactive, toxic, flammable, or poisonous materials, explosives, or other hazardous materials on the premises except in accordance with all Applicable Laws referenced in Article 3, and will not permit hazardous or unreasonably objectionable smoke, fumes, vapor, or odors to emit from the Authority Property. No junk or garbage will be stored or allowed to accumulate on the Authority Property.

Article 5 Term, Lease Commencement Date, and Lease Expiration Date

5.1 The term of this Lease shall begin on the Lease Commencement Date and end on the Lease Expiration Date.

5.2 The “Lease Commencement Date” means the date on which the Lease is executed and delivered by both Parties.

5.3 The “Lease Expiration Date” means the date that is ninety-nine (99) years after the Lease Commencement Date, or any earlier date on which the term of this Lease is terminated in accordance with Article 17.

Article 6 Consideration

6.1 The Authority grants this Lease to Enbridge in consideration of the following: (i) Enbridge’s agreement set forth in the Tunnel Agreement to construct the Tunnel at Enbridge’s cost and expense and, upon completion of the Tunnel, to assign its ownership interest in the Tunnel to the Authority in accordance with Section 3.4(a) of the Tunnel Agreement; (ii) Enbridge’s agreement to grant to the Authority access easements over the Additional Tunnel Right of Way (as defined in the Tunnel Agreement), upon completion of the Tunnel, in accordance with Section 3.4(b) of the Tunnel Agreement; and (iii) Enbridge’s obligations under Article 9 of this Lease to pay for all costs of operating, maintaining and decommissioning the Tunnel, except as set forth in Article 9.

6.2 In return for the consideration provided under Section 6.1 above, Enbridge will owe no rent to the Authority under this Lease.

Article 7 Agreements with Third Party Utilities

7.1 The procedure by which third-parties may obtain access to the Tunnel is set forth in Schedule 1 – Third-Party Utility Access.

7.2 If any Third-Party Utility obtains access to the Tunnel in accordance with Schedule 1 - Third-Party Access, the Authority shall not allow that Third-Party Utility to interfere with Enbridge’s obligations to conduct Tunnel O&M under this Lease, or with Enbridge’s construction, operation, maintenance, use, protection, and repair of the Straits Line 5 Replacement Segment.

Article 8 Care and Restoration

8.1 If, in the operation or maintenance of the Tunnel, Enbridge damages or disturbs the surface or subsurface of any property or the public or private improvements located thereon, therein, or thereunder, Enbridge shall promptly, at its own cost and expense, and in a manner reasonably acceptable to the Authority, restore the surface or subsurface of the public and/or private property, and any appurtenances thereon, in as good a condition as before said damage or disturbance. All restoration work shall be conducted in accordance with MDOT Standard Specifications for Construction and in accordance with all Applicable Laws.

8.2 If the Authority reasonable deems restoration, repairs, and/or replacement of the surface, subsurface, or any structure located thereon, therein, or thereunder to be required as a result of Enbridge’s acts or omissions in operating or maintaining the Tunnel (“Deficiency”), the Authority will promptly provide Enbridge with written Notice specifying in reasonable detail the nature of the Deficiency. Upon receipt of such Notice, Enbridge will give written Notice to the Authority either accepting or disputing responsibility for the Deficiency. If Enbridge accepts responsibility for the Deficiency, Enbridge will promptly initiate action to cure the Deficiency and if Enbridge will not have not initiated such action within 90 days after receipt of the Notice from the Authority, the Authority will have the right to perform the necessary restoration, repair, or replacement, either through its own forces or through a hired contractor, and the Authority will be reimbursed by Enbridge or the Maintenance Reserve Account for its reasonable out-of-pocket costs and expenses. If Enbridge disputes that its acts or omissions are responsible for the Deficiency, the dispute will be resolved in accordance with Article 16.

Article 9 Cost to Operate and Maintain the Tunnel

9.1 Costs of Tunnel Operation, Maintenance and Decommissioning. For the term of this Lease, Enbridge will be solely responsible for all costs of operating, using, maintaining and decommissioning the Tunnel, including procurement and payments to contractors performing the work consistent with the terms and conditions herein, except to the extent a Third-Party Utility is responsible for a portion of such costs in accordance with Schedule 1 – Third-Party Access.

9.2 No Use or Obligation of State Funds Inconsistent with Applicable Law. Nothing in this Lease will be deemed to obligate the expenditure of State funds, including, but not limited to money from the Straits Protection Fund, for the construction, operation, maintenance or decommissioning the Tunnel. The Authority’s performance of its responsibilities related to the

Tunnel and this Lease are subject to and conditioned upon the appropriation of sufficient funds for those purposes.

9.3 Independent Quality Assurance Contractor and Authority Technical Support. Enbridge will provide all funds necessary for the Authority to retain an Independent Quality Assurance Contractor(s) and/or technical experts with appropriate technical expertise to perform the following tasks: (i) on an annual basis, audit Enbridge's Tunnel O&M records to verify compliance with Article 10 of this Lease, including performing an annual inspection; (ii) address any deficiencies identified as a result of the audit performed under clause (i) above; (iii) perform analysis of any repairs and/or rehabilitation of the Tunnel; and (iv) provide related information to the Authority. Prior to retaining an Independent Quality Assurance Contractor or Technical Experts, the Authority will allow Enbridge to review any agreements between the Independent Quality Assurance Contractor or Technical Experts and disapprove of any unreasonable costs not required to perform the functions set forth in clauses (i)-(iv).

9.4 Costs of Third-Party Utilities. Notwithstanding anything in this Lease to the contrary, neither Enbridge nor the Authority will be responsible for costs attributable to the design, construction, installation, commissioning, or operation of Third-Party Utilities in the Tunnel, or the costs of their operation and maintenance, or for any hazardous or unreasonably objectionable smoke, fumes, vapor, or odors caused by or resulting from such Third-Party Utilities. All such costs and conditions will be the responsibility of the entity that caused the Utilities to be installed and operated, or their assigns.

9.5 Third-Party Utilities' Costs for Tunnel Operation and Maintenance. If Third-Party Utilities obtain permission from the Authority to use space within the Tunnel, such Third-Party Utilities will be responsible to pay the Tunnel O&M costs set forth in Schedule 1 - Third-Party Access.

Article 10 Tunnel O&M

10.1 Tunnel O&M obligations. Enbridge shall perform all Tunnel O&M required under this Lease, from the Lease Commencement Date until the Lease Expiration Date.

10.2 Equipment for Tunnel O&M. Enbridge shall procure, deliver, install, commission, maintain, repair, decommission, upgrade and replace any goods, equipment and materials required to perform the Tunnel O&M in accordance with this Lease, at its sole cost and expense.

10.3 Interface with the Authority and Third-Party Contractors. Enbridge shall coordinate and cooperate with the contractors that the Authority retains to perform activities related to the Tunnel.

10.4 Tunnel O&M Work Plan

10.4.1 Enbridge will perform Tunnel O & M in accordance with the Tunnel O & M Work Plan approved by the Authority under the Tunnel Agreement and any modifications to that Work Plan subsequently agreed to by the Authority and Enbridge.

10.5 Personnel. Enbridge shall employ qualified personnel to operate the Tunnel safely, and provide adequate levels of service. The required job positions and qualifications will be identified as part of the Tunnel O&M Work Plan.

10.6 Tunnel O&M Inspections

10.6.1 Enbridge will undertake inspections of the Tunnel in accordance with the inspection schedule set forth in the Tunnel O&M Work Plans.

10.6.2 Not later than ninety (90) days after completing any inspection required in accordance with Section 10.6.1, Enbridge will deliver to the Authority a written report of the inspection findings. Enbridge will revise the Tunnel O&M Work Plans, as necessary, to address additional routine maintenance resulting from the inspection findings.

10.6.3 Not later than April 1 of each calendar year during the term of this Lease, Enbridge will deliver to the Authority a written report that describes the Tunnel O&M that was performed in the immediately preceding calendar year, including any deviations from the Tunnel O&M Work Plans and reason for such deviation.

10.7 Performance Incentives

If the Authority reasonably deems that Enbridge has failed to perform the Tunnel O&M, the Authority will promptly provide Enbridge with written Notice specifying in reasonable detail the nature of such failure. Upon receipt of such Notice, Enbridge will give written Notice to the Authority either accepting such failure or disputing such failure. If Enbridge accepts such failure, Enbridge will promptly initiate action to cure such failure. If Enbridge disputes such failure, the dispute will be resolved in accordance with Article 16.

10.8 Maintenance Reserve Account

10.8.1. Enbridge shall establish and maintain a reserve account (the “Maintenance Reserve Account”) to fund planned Tunnel maintenance expenses as well as any expenses incurred under Section 9.3 or costs required to be incurred under Section 10.7. On an annual basis, Enbridge shall deposit sufficient funds into the Maintenance Reserve Account to cover the Tunnel maintenance expenses for the following 2 years, less any Tunnel O&M funds deposited or required to be deposited by Third-Party Utilities in accordance with Section 10.8.2 below. Funds will be drawn from the Maintenance Reserve Account by Enbridge in order to pay for the Tunnel maintenance.

10.8.2 All Tunnel O&M costs required to be paid by Third-Party Utilities in accordance with Schedule 1 - Third-Party Access shall be deposited into the Maintenance Reserve Account.

10.8.3 The Authority may have access to the Maintenance Reserve Account for purposes of collecting costs under Sections 8.2, 10.8.4, and 15.4.2.

10.8.4 . Any funds collected from Third-Party Utilities for fees to occupy the Tunnel shall be deposited into the Maintenance Reserve Account. In accordance with MCL 254.324d(4)(J), upon a showing by the Mackinac Bridge Authority that it has a loss of net profit as a result of a Third-Party Utility for the transmission of data and telecommunications moving its facilities from the Mackinac Bridge into the Tunnel, the Authority shall notify Enbridge and the Third-Party Utility of the amount of the loss of net profit and add it to the required fees. Fees for loss of net profits shall be used to reimburse the Mackinac Bridge Authority for the loss of said net profit as a result of such a move. Following the collection of such funds, the Authority shall have the right to send such funds to the Mackinac Bridge Authority in accordance with this provision.

Article 11 Cooperation

Each Party agrees that whenever this Lease provides for it to approve, concur with, or jointly act with the other Party, such approval, concurrence or joint action will not unreasonably be withheld, conditioned or delayed.

Article 12 Assignment

Neither the Authority or Enbridge may assign or otherwise transfer any of its rights or obligations under this Lease to a third party without the express prior written consent of the other Party. This section does not apply to the Authority if its obligations and/or rights are transferred by operation of law, including but not limited to, executive reorganization.

Article 13 Insurance

13.1 Requirement to Procure and Maintain Insurance- Enbridge and its contractors performing work under this Lease will procure and maintain or cause to be procured and maintain insurance policies meeting the requirements of this Article 13 and Schedule 2 of this Lease (Insurance Specifications), collectively “Insurance Requirements.” Each required policy will include the Authority and the State as additional insureds to the extent commercially available in accordance with customary insurance practice. The Parties agree that it is a customary insurance practice to add an additional insured to a commercial general liability policy.

13.2 Qualified Insurers- All insurance required under this Lease will be procured from insurers that at the time coverage commences are authorized to do business in the State and have a current policyholder’s management and financial size category rating of not less than A-:VI according to A.M. Best’s Financial Strength Rating and Financial Size Category or must be rated in one of the two top categories by two nationally recognized financial rating agencies (“Qualified Insurer”), except as otherwise provided in Schedule 2 of this Lease (Insurance Specifications) or approved in writing by the Authority in its good faith.

13.3 Premiums, Deductibles and Self-Insured Retentions- Enbridge will timely pay, or cause to be paid, the premiums for all Insurance Policies and insurance coverages required by this Lease. There will be no recourse against the Authority or any of the other insured parties for payment of premiums or other amounts with respect to the Insurance Policies, Enbridge will be responsible for paying all insurance deductibles or self-insured retentions, and the Authority will have no

liability for deductibles, self-insured retentions or claim amounts exceeding the required policy limits.

13.4 Verification of Coverage- Upon execution of this Lease, and on an annual basis thereafter until this Lease is terminated, Enbridge shall provide to the Authority, or the Authority's designated representative, Certificate(s) of Insurance on standard forms regularly accepted in the industry certifying Enbridge's compliance with this provision and specifically identifying coverage extensions and endorsements required herein. In the event of a reduction in Enbridge insurance limits during the term of this Lease, which may otherwise reduce the limits of insurance required to comply with this provision, Enbridge shall promptly provide the Authority with notice of same, and immediately thereafter secure such additional insurance as is required to comply with the terms of this provision. The Authority's acceptance of certificates or correspondence associated thereto does not constitute a waiver, release or modification of the requirements under this provision.

Article 14 Indemnification

14.1 Indemnification.

14.1.1 In addition to the protection afforded by any policy of insurance, Enbridge agrees, subject to Section 14.1.1(a) below, to indemnify, defend and hold harmless the Authority, the State, the Michigan State Transportation Commission, MDOT, and all officers, agents, contractors providing expert advice to the Authority, and employees thereof (collectively, the "Indemnified Parties"), from any loss, damage, cost or expense suffered by any of them by reason of any claim made by any third party and arising out of any act or omission of Enbridge within the Authority Property, for (a) Enbridge's failure to pay for any product or service, (b) property damage, (c) personal injury or death, or (d) environmental damage, degradation, response and cleanup cost, in each case including reasonable attorneys' fees and related costs.

(a) If Third-Party Utilities are placed in the Tunnel, neither Enbridge nor the Authority will own any utilities or facilities installed by the Third-Party Utilities, or have responsibility or liability of any kind related to the construction, operation, or maintenance of utilities or facilities owned, constructed, operated, and/or maintained by the Third-Party Utilities. Said utilities or facilities will instead be the property of the Third-Party Utility that caused them to be installed. All Third-Party Utilities will be required to indemnify, defend and hold harmless Enbridge and the Authority from any loss, damage, cost or expense suffered by Enbridge or the Authority by reason of any claim made by a third-party and arising out of any act or omission of the Third-Party Utilities within the Authority Property, as well as naming them as additional insured on said Third-Party Utilities' liability insurance.

14.1.2 Authority not Liable. Authority shall have no obligation to any contractor or subcontractor providing goods or services to Enbridge without Authority's prior and explicit consent and notwithstanding Authority's concurrence in or approval of the award of any contract or subcontract or the solicitation thereof.

14.1.3 No Creation of Liability. Enbridge will not intentionally take any action that is neither permitted nor required under this Lease that would result in claims being asserted against or judgments being imposed against any of the Indemnified Parties. Any such intentional act shall, as the exclusive remedy, subject Enbridge to its obligation of indemnity under Section 14.1.1.

14.2 Defense and Indemnification Procedures

14.2.1 If the Authority receives Notice of a Claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 14.1.1, the Authority will give prompt Notice of the Claim to Enbridge in accordance with Article 23.

14.2.2 Subject to Section 14.2.5, if the insurer under any applicable insurance policy accepts the tender of defense, the Authority and Enbridge will cooperate in the defense as required by such insurance policy. If no insurer under potentially applicable insurance policies provides defense, then Section 14.2.3 will apply.

14.2.3

(a) Within 15 business days after receipt of the Authority's Notice, Enbridge will provide Notice to the Authority whether Enbridge has tendered the matter to its insurer. If Enbridge does not tender the matter to its insurer, then within such 15 business days, or if the insurer rejects the tender, then within 5 business days after such rejection, Enbridge will provide Notice to the Authority stating whether Enbridge accepts the tender of defense.

(b) To the extent allowed by its insurer, by unconditionally accepting the tender of defense, Enbridge will: (i) be deemed to confirm that the claim is subject to indemnification under this Agreement without any "reservation of rights;" (ii) if Enbridge believes the claim is not subject to indemnification by Enbridge, it shall provisionally accept the tender; and (iii) the Authority agrees that Enbridge may stand in its shoes with respect to any indemnity by another tunnel user. If for any reason Enbridge refuses to accept such tender of defense of a claim subject to indemnification, as set forth in this Article 14, Enbridge agrees that the Authority may hire a Special Assistant Attorney General to defend it, at Enbridge's sole cost and expense.

14.2.4 Upon acceptance of the tender of defense, Enbridge will be entitled to select legal counsel for the Indemnified Parties, subject to (i) approval by the Authority in its reasonable discretion and (ii) approval of the legal counsel as a Special Assistant Attorney General for the State of Michigan by the Michigan Attorney General. Enbridge will otherwise control the defense of such claim and bear the fees and costs of defending and settling such claim. None of the Indemnified Parties will settle any claim for which indemnification is sought in accordance with Section 14.1.1. If the Authority receives Notice of a Claim or otherwise has actual knowledge of a claim that it believes is within the scope of the indemnities under Section 14.1.1., the Authority will give prompt Notice of the Claim to Enbridge in accordance with Article 23.

- (a) Enbridge will fully and regularly inform the Authority of the progress of the defense and of any settlement discussions; and
- (b) Each of the Indemnified Parties will:
 - (i) reasonably cooperate in said defense;
 - (ii) provide Enbridge all materials and access to personnel Enbridge reasonably requests as necessary for defense, preparation and trial and which or who are under the control of or reasonably available to the Authority;
 - (iii) maintain the confidentiality of all communications between it and Enbridge concerning such defense.

14.2.5 Notwithstanding Section 14.2.3, the Authority may assume its own defense by delivering Notice to Enbridge of such election and the reasons thereof, if the Authority, at the time it gives Notice of the Claim or at any time thereafter, reasonably determines that:

- (a) A conflict exists between it and Enbridge which prevents or potentially prevents Enbridge from presenting a full and effective defense;
- (b) Enbridge is otherwise not providing an effective defense in connection with the Claim; or
- (c) Enbridge lacks the financial capacity to satisfy potential liability or to provide an effective defense.

Article 15 Hand Back Criteria

15.1 Project Handback Process

15.1.1 Intentionally omitted.

15.2.1 The Parties will perform a joint Inspection of the Tunnel, and Enbridge shall produce and deliver to the Authority, a report (a “Project Handback Condition Report”) for review and approval not less than 36 months prior to the scheduled Lease Expiration Date or prior to termination of this Lease in accordance with Article 17 that:

- (a) Identifies the condition of the Tunnel;
- (b) Identifies any Tunnel O&M required to be performed for the remainder of the Tunnel's 99-year design life;
- (c) Identifies any Tunnel O&M that must be conducted by Enbridge to repair or rehabilitate the Tunnel to ensure that the Tunnel will meet its 99-year design life (the "Handback Work"), including an estimate of the costs to perform the Handback Work (the "Handback Work Costs"); and
- (d) Details how the Handback Work Costs were calculated.

15.2.2 Enbridge shall carry out the Handback Work at its own cost and expense notwithstanding that the actual cost of the Handback Work may be higher than the Handback Work Costs.

15.3 Enbridge Not Relieved of Obligations

Notwithstanding:

15.3.1 Any agreement of the Authority to any Handback Work and Handback Work Costs;

15.3.2 Any participation of the Authority in any inspection under this Article 15; or

15.3.3 The complete or partial carrying out of the Handback Work,

Enbridge shall not be relieved or released from any obligation to conduct any other inspection or to perform any other works to the extent otherwise required by this Lease.

15.4 Final Condition Report

15.4.1 The Parties will perform a joint inspection of the Tunnel and Enbridge shall produce and deliver to the Authority a final Condition Report within 45 days after the Lease Expiration Date (the "Final Project Handback Condition Report") that documents the completion of the Handback Work, and, if not, any Handback Work remaining to be performed and the associated Handback Work Costs.

15.4.2 If the Final Project Handback Condition Report identifies any remaining or deficient Handback Work, the Authority may withdraw from the Maintenance Reserve Account or draw on the acceptable Letter of Credit an amount equivalent to 100% of the applicable Handback Work Costs, and, following completion of such remaining or deficient Handback Work, the Authority will pay any remaining funds in the Maintenance Reserve Account or return the unused portion of the acceptable Letter of Credit.

15.5 Assistance in Securing Continuity

15.5.1 Enbridge shall, before the Lease Expiration Date, do all things reasonably required by the Authority to ensure the smooth and orderly transfer of responsibility for the Tunnel to the Authority or its nominee, including:

- (a) Meet with the Authority and such other persons notified by the Authority to discuss the Tunnel;
- (b) Provide full access to its operations for the purpose of familiarization;
- (c) Provide accurate and comprehensive information to Authority and its nominee to determine the status and condition of the Tunnel and any construction programs in place at the time;
- (d) Perform any other activities specified in the Project Handback Condition Report.

Article 16 Dispute/Issue Resolution

16.1 Except as otherwise specified in this Lease, the Parties agree to the following procedures to resolve all disputes between them with respect to or arising under this Lease.

16.2 Informal Dispute Resolution- Designated representatives of the Parties will engage in good faith efforts to informally resolve the dispute for a period of up to sixty (60) days, provided that the Parties may mutually agree in writing to extend that period.

16.3 Optional Mediation- If the dispute is not resolved informally through Article 16.2, the Parties may, through mutual written agreement, select a neutral mediator to facilitate the resolution of the dispute.

16.4 Judicial Dispute Resolution- If the dispute is not resolved informally through Section 16.2, or, if applicable, through Section 16.3, either Party may submit the dispute to a court of competent jurisdiction for resolution.

Article 17 Remedies

17.1 Each of the Parties acknowledges that the provisions of this Lease are essential for the protection of the legitimate interests of the other Party and are fair and reasonable in scope and content and agrees that an award of money damages would be inadequate for any breach of this Lease by the other Party or its representatives and that any such breach would cause the non-breaching Party irreparable harm. Accordingly, in addition to any other remedies that may be available at law or in equity, each of the Parties shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief, mandamus, and specific performance and each of the Parties agrees not to oppose the granting of such relief on the basis that the non-breaching party has an adequate remedy at law. Notwithstanding anything in Article 16 to the contrary, Enbridge may seek temporary injunctive relief in a court of law with jurisdiction over the Parties to maintain the status quo or prevent irreparable harm without first following the procedures in Sections 16.2 and 16.3.

17.2 If Enbridge fails to cure a breach of Enbridge's obligations under Article 10 of this Lease within 90 days after receipt of written notice from the Authority describing such breach or, if such breach cannot reasonably be cured within such 90 days, but Enbridge commences to cure such breach within such 90 day period, within such longer period of time as will reasonably be required to cure such breach, the Authority may retain an experienced, creditworthy third-party operator to perform the requirements under Article 10 of this Lease and Enbridge will reimburse the Authority for the reasonable costs and expenses payable to such third party operator during the term of this Lease. Section 17.1 and this Section 17.2 will be the Authority's sole and exclusive remedies for any breach of Enbridge's obligations under Article 10 of this Lease.

17.3 Termination by the Authority. The Authority may terminate this Lease if: (i) after being notified in writing by the Authority of any material breach of this Lease (except for a breach of Article 10), Enbridge fails to commence remedial action within 90 days to correct the identified breach or fails to use due diligence to complete such remedial action within a reasonable time thereafter; (ii) the dispute resolution procedures of Article 16 are followed with respect to the breach; and (iii) the final judicial resolution of the dispute is in favor of the Authority's position that the Lease should be terminated.

17.4 Termination by Enbridge. Enbridge may terminate this Lease:

(a) If (i) after being notified in writing by Enbridge of any material breach by the Authority of this Lease, the Authority has failed to commence remedial action within 90 days to correct the identified breach or impairment or failed to use due diligence to complete such remedial action within a reasonable time thereafter; (ii) the dispute resolution procedures of Article 16 are followed with respect to the breach; and (iii) the final judicial resolution of the dispute is in favor of Enbridge's position that the Lease should be terminated;

(b) If the Third Agreement is rescinded, revoked, or terminated for any reason other than as provided under Section 10.2 of the Third Agreement;

(c) If: (i) after being notified in writing by Enbridge of any material breach by the State of the Third Agreement which shall include but not be limited to any unreasonable impairment by the State of Enbridge's ability to construct, operate, and maintain the Straits Line 5 Replacement Segment within the Tunnel in accordance with the Tunnel Agreement, this Lease, and the Third Agreement, the State fails to commence remedial action within 90 days to correct the identified breach or fails to use due diligence to complete such remedial action within a reasonable time thereafter; (ii) the applicable dispute resolution procedures of the Third Agreement are followed; and (iii) the final judicial resolution of the dispute is in favor of Enbridge's position;

(d) If Enbridge has involuntarily ceased operation of any portion of Line 5 as a result of a court order or at the direction of a Governmental Entity; or

(e) Enbridge has voluntarily chosen to permanently cease operations of Line 5.

17.5 Material Breach by the Authority

If after being notified in writing by the Enbridge of any material breach of this Lease, (i) the Authority fails to commence remedial action within 90 days to correct the identified breach or

fails to use due diligence to complete such remedial action within a reasonable time thereafter; (ii) the dispute resolution procedures of Article 16 are followed with respect to the material breach; and (iii) the final judicial resolution of the dispute is in favor of the Enbridge's position that the Authority is in material breach, then Enbridge may do any of the following at its sole discretion:

(i) Enbridge may, as part of the judicial resolution of the dispute, seek equitable relief in accordance with Section 17.1, recognizing that MCL 254.324 does not provide an opportunity for an obligation of funds as a remedy for breach, and therefore monetary damages cannot provide adequate relief under the law;

(ii) Enbridge may exercise its rights under Section 17.4; or

(iii) Enbridge may continue under this Lease without obligation to perform under Sections 9.3, 10.4, 10.7 and 10.8.

Article 18 Effect of Termination

18.1 If this Lease is terminated in accordance with Section 17.3: (i) if no other Third-Party Utility or other third-party has been authorized by the Authority to use the Tunnel at that time Enbridge will be solely responsible for all costs associated with the abandonment of the Tunnel and the decommissioning of the Straits Line 5 Replacement Segment; and (ii) Enbridge's obligation to indemnify the Authority under Article 14 will survive such termination.

18.2 If this Lease is terminated in accordance with Sections 17.3 or Section 17.4(e), Enbridge will reimburse the Authority for any reasonable costs incurred by the Authority in retaining a staff official and third parties to assist the Authority's performance under this Lease.

18.3. If this Lease is terminated in accordance with Sections 17.4(a), (b) or (c), the assignment of rights to Enbridge under the Tunnel Easement referenced in Section 3.1(b) of the Tunnel Agreement will remain effective without further action by the Parties.

Article 19 Right to Purchase

19.1 The Authority shall not sell or otherwise dispose of all or any portion of the Tunnel or Tunnel Easement if this Lease is terminated in accordance with Section 17.4 without Enbridge's written consent.

19.2 If the Authority desires to sell or otherwise dispose of all or any portion of the Tunnel or the Tunnel Easement, then, in consideration of Enbridge's commitment to operate and maintain the Tunnel, the Authority will provide Enbridge with written notice of such desire and the Authority's proposed reasonable terms and conditions of sale.

19.3 Enbridge shall have ninety (90) days after its receipt of the Authority's notice under Section 19.1 in which to notify the Authority of Enbridge's exercise of its right of purchase. If Enbridge timely exercise such right, the Parties shall draft, and the Parties shall promptly enter into, a purchase agreement on the terms and conditions provided for in Section 19.1.

19.4 If Enbridge does not timely exercise its right of purchase in accordance with Section 19.2, the Authority may proceed to sell the Tunnel to a third-party transferee provided that (a) the terms and conditions of the sale are no more favorable to the third party than those offered to Enbridge in accordance with Section 19.1, (b) the third-party transferee assumes in writing all of the Authority's obligations under this Lease, and (c) the sale to the third party closes not later than six (6) months after the expiration of the ninety (90) day period referenced in Section 19.2. Enbridge will have the right to examine, within the thirty (30) days following the closing date of the sale of the Tunnel to the third-party transferee, the records of the Authority and the third party transferee to satisfy itself that the sale has been consummated on the terms described in this Section 19.3.

19.5 Following the execution of this Lease, the Parties will record a memorandum of Enbridge's purchase rights under this Article 19.

Article 20 Tunnel Easement

20.1 During the term of this Lease and any period described in Section 18.3, Authority will not terminate or amend, or consent to any termination or amendment, of the Tunnel Easement required to be obtained by the Authority under Section 3.1(a) of the Tunnel Agreement. This Section 20.1 shall survive the termination of this Lease.

Article 21 Quiet Enjoyment

21.1 Enbridge will at all times during the term of this Lease have the right to peacefully and quietly have, hold and enjoy the Tunnel, subject to the terms of this Lease.

Article 22 Force Majeure

22.1 Whenever Enbridge will be required by the terms of this Lease or by Applicable Law to perform any contract, act, work, labor or services or to perform and comply with any Applicable Law, Enbridge will not be deemed to be in default hereunder and the Authority will not enforce or exercise any of its rights under this Lease, if and so long as non-performance or default hereunder will be caused by strikes, acts of God, shortages of labor or materials, war, terrorist acts, pandemics, civil disturbances and other causes beyond the reasonable control of Enbridge.

Article 23 Notice

23.1 Any notice, consent, or other communication ("Notice") required or permitted under this Lease shall be in writing and either delivered in person, sent by facsimile transmission, deposited in the United States mail, postage prepaid, registered or certified mail, return receipt requested, or deposited with any commercial air courier or overnight express service addressed as follows:

[TBC]

23.2 Notice shall be deemed received at the time it is personally served or on the second business day after its deposit with any commercial air courier or overnight express service or, if mailed, three (3) days after the Notice is deposited in the United States mail as above provided. Any time period stated in a Notice shall be computed from the time the notice is deemed received. Either

Party may change its mailing address or the person to receive the Notice by notifying the other Party in writing, as provided in this Section.

Article 24 Entire Agreement; Amendment

24.1 This Lease, together with the Tunnel Agreement, contains all covenants and agreements between the Authority and Enbridge relating to the matters set forth in this Lease.

24.2 This Lease may be modified or amended only by a written amendment executed by the Parties and/or all of their successors or assigns, as applicable.

Article 25 Governing Law

25.1 This Lease shall be construed, interpreted, and applied in accordance with the laws of the State of Michigan.

Article 26 Non-Waiver

26.1 No covenant or condition of this Lease may be waived by any Party, unless so done in the form of a written amendment to this Lease executed by the Parties. Forbearance or indulgence by any Party in any regard whatsoever shall not constitute a waiver of the covenants or conditions to be performed by the other Parties.

Article 27 Severability

27.1 If any provision of this Lease shall be held or deemed to be or shall, in fact, be illegal, inoperative, or unenforceable, the same shall not necessarily affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable and the Parties will expeditiously negotiate in good faith in an attempt to agree to another provision or provisions (instead of the provision which is illegal, inoperative or unenforceable) that is legal, operative and enforceable and carries out the Parties' intentions under this Lease.

Article 28 Binding Agreement

28.1 This Lease shall be binding upon all of the permitted assigns, grantees, and successors in interest to each of the Parties and shall remain in full force and effect unless amended as provided herein. The Parties agree to require their respective assigns and, if any, to assume in writing all the obligations of that Party hereunder.

Article 29 Miscellaneous

29.1 The Parties agree to execute and acknowledge an appropriate memorandum of this Lease for public recordation purposes, so that public notice of this Lease be given.