

August 31, 2018

Via Email & Courier

Board of Commissioners of Public Utilities
Prince Charles Building
120 Torbay Road, P.O. Box 21040
St. John's, NL A1A 5B2

Attention: Ms. Cheryl Blundon
Director of Corporate Services & Board Secretary

Dear Ms. Blundon:

Re: 2017 General Rate Application (GRA) – Information Filing – Interim Transmission Funding Agreements


Enclosed with this letter please find one (1) original plus thirteen (13) copies of an Information Filing on the Interim Transmission Funding Agreements.

This Information is being filed with the Board to provide further detail to the Parties on the interim agreements which have been executed related to the early availability of the Labrador Island Link and Labrador Transmission Assets and Hydro's associated obligations.

If you have any questions, please contact the undersigned.

Yours truly,

NEWFOUNDLAND AND LABRADOR HYDRO



Geoffrey P. Young
Corporate Secretary & General Counsel
GPY/kd

cc: Gerard Hayes – Newfoundland Power
Paul Coxworthy – Stewart McKelvey
Denis J. Fleming – Cox & Palmer
ecc: Van Alexopoulos – Iron Ore Company
Senwung Luk – Olthuis Kleer Townshend LLP

Dennis Browne, Q.C. – Brown Fitzgerald Morgan & Avis
Dean Porter – Poole Althouse

Benoît Pepin – Rio Tinto



Interim Transmission Funding Agreements

Information Filing

August 31, 2018

A Report to the Board of Commissioners of Public Utilities

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1.0 Background

In June 2017, Nalcor announced that the Labrador-Island Link (“LIL”) and Labrador Transmission Assets (“LTA”) were expected to be available for service in mid-2018, well in advance of the expected commissioning of the Muskrat Falls generating station (“MF Plant”). Since then, the schedule for these transmission assets has been revised, however dynamic commissioning (i.e. testing while energized) is currently ongoing, and there remains an expectation that the assets will be available for service in early 2019.

In its 2017 GRA filing, Newfoundland and Labrador Hydro (“Hydro”) forecast that it would access substantially less expensive off-island purchases through the LIL and LTA to reduce Holyrood generation and provide an overall cost savings to customers. Until first power is available from the MF Plant, the majority of off-island purchases will come from the Recapture Energy¹ that is in excess of that required to serve Hydro’s customers in Labrador. Energy produced by the MF Plant generating units, as they are commissioned², is also anticipated to be available. In addition, there are options to purchase from markets outside Newfoundland and Labrador, and transmit through the Quebec grid, for delivery to Labrador and subsequently the Island Interconnected System. To gain access to these lower cost sources of energy, Hydro forecasts that it will incur and recover from its customers³ actual costs attributable to off-island power purchases, including transmission costs for delivery. This includes the operating and maintenance costs (“O&M Costs”) associated with the LIL and LTA.

While the owners of the LIL and LTA have no obligation to make these assets available for service prior to commissioning and/or substantial completion⁴, there is an opportunity to use

¹ Under the terms of the Power Purchase Agreement between Hydro and Churchill Falls (Labrador) Corporation (“CF(L)Co”), Hydro is able to, and does, purchase approximately 300 MW of Recapture Energy from CF(L)Co at a cost of 0.2¢ per kWh for use outside of the province of Quebec.

² This is referred to as Commissioning Period Energy and is available to Hydro at no cost under the Muskrat Falls Power Purchase Agreement.

³ In its original 2017 GRA filing, Hydro proposed to defer recovery of these costs until a later date as directed by the Board, however as a result of the Settlement Agreement, the current proposal is to include these costs in rates to be approved by the Board pursuant to Hydro’s 2017 GRA.

⁴ LIL full commissioning occurs when the MF Plant is substantially complete, which requires testing at the design capacity of 675 MW per pole, which cannot be completed until at least three units are available at MF Plant. LTA obligation for availability is upon full commissioning of the MF Plant.

1 these assets earlier to reduce costs for customers of the Island Interconnected System. As the
2 assets will be used to benefit Hydro's customers, it is therefore appropriate for Hydro to
3 reimburse the asset owners for their actual O&M Costs which arise as a result of these assets
4 being made available for service earlier than would otherwise be required.

5
6 In Hydro's Supplemental Evidence, *Customer Impacts Reflecting the 2017 GRA Settlement*
7 *Agreements*, filed on July 20, 2018, Hydro provided an updated forecast of savings from off-
8 island purchases for 2018 and 2019. Hydro also provided the projected costs associated with
9 off-island purchases for the same period. As noted in correspondence to the Board on August
10 27, 2018, Hydro intends to provide a further update in early September based on information
11 recently received. This planned submission will indicate lower savings associated with the
12 displacement of production and fuel consumption at Holyrood, as well as lower costs
13 associated with the LIL and LTA, than that provided on July 20, 2018, and will confirm previous
14 analyses which showed that the expected benefits far outweigh the costs. Therefore, it is
15 prudent to incur the costs of purchasing and delivering to the island the above mentioned off-
16 island purchases to displace production and fuel consumption at Holyrood. To enable this,
17 Hydro has finalized and entered into agreements⁵ with the owners of the LIL and LTA to ensure
18 these assets are made available for service earlier than would otherwise be required. Hydro has
19 also obtained a guarantee that the availability of these assets will be sufficient to ensure the
20 savings realized by using off-island purchases will offset the costs incurred for ensuring these
21 assets are available for service.

22 23 **2.0 Interim Agreements**

24 Hydro has concluded negotiations with the owners of the LIL and LTA facilities and their parent
25 company, Nalcor Energy, regarding the early availability of the LIL and LTA assets and
26 associated obligations. In support of Hydro's 2017 GRA, three interim agreements, attached as

⁵ In the Supplemental Evidence (page 3) Hydro stated it had entered into agreements with the owners of the LIL and the LTA. This was corrected by Ms. Hutchens during the hearing proceedings on July 24, 2018. Ms. Hutchens stated that Hydro was continuing to work on the agreements and would make the agreements and witnesses available to the Board for review as required. Since then, Hydro has concluded negotiations of these agreements, which were executed on August 30, 2018.

Schedules 1, 2 and 3 to this correspondence, are filed for the information purposes of the Parties:

- Labrador Island Link Interim Transmission Funding Agreement (“LIL Interim TFA”);
- Labrador Transmission Assets Interim Transmission Funding Agreement (“LTA Interim TFA”); and,
- Minimum Performance Guarantee (“Guarantee”).

The LIL Interim TFA is between the Labrador-Island Link Limited Partnership (Partnership) and Hydro to provide for cost reimbursement, from Hydro to the Partnership, for O&M Costs resulting from the LIL being made available for service earlier than would otherwise be required.

The LTA Interim TFA is between the Labrador Transmission Corporation (“LTC”) and Hydro to provide for cost reimbursement, from Hydro to LTC, for O&M Costs resulting from the LTA being made available for service earlier than would otherwise be required.

Both of the Interim TFAs were developed based on the existing long-term Transmission Funding Agreement (“Existing TFA”), executed in 2013, to which Hydro is a party. The Existing TFA stipulates that all costs associated with the LIL (including financing and depreciation, as well as O&M Costs) will be paid by Hydro, which was fundamental to securing financing for the Muskrat Falls Project. However, the Existing TFA does not take effect, nor does it oblige the Partnership to make the LIL available for service until it is fully commissioned. Similarly, recovery of all costs related to the LTA, and an obligation to make it available for service, are provided for under an existing agreement⁶ which does not take effect until full commissioning of the MF Plant.

The Guarantee is between Nalcor Energy and Hydro and provides Hydro with a guaranteed minimum average availability of the LIL and LTA during the term of the Interim TFAs. The basis

⁶ Costs related to the LTA are to be paid by the Muskrat Falls Corporation (under the Generator Interconnection Agreement) which it will then include in its billings to Hydro under the Muskrat Falls Power Purchase Agreement.

for the availability that is guaranteed is the model which was developed to estimate the benefit of off-island purchases to customers.⁷ Based on this model, Hydro requires transmission availability that enables an average of 32 GWh per month (over the term of the Guarantee) to be delivered to the island to ensure that Hydro realizes an overall net benefit from the use of off-island purchases, including delivery costs, in comparison to the alternative of using Holyrood. Should performance deficiencies by either or both of the LIL and LTA result in Hydro realizing a net loss from the use of off-island purchases, Nalcor will reimburse Hydro, in proportion to the contribution of these deficiencies to the net loss, for the O&M Costs of the LIL and LTA.

3.0 Basis for Cost Recovery

3.1 Previous Orders

In its July 20, 2018 Supplemental Evidence, Hydro proposed its recovery of the O&M Costs incurred to use the LIL and LTA in the 2018 and 2019 Test Years is consistent with the Order in Council, O.C. 2013-343 (attached as Schedule 4). The attached LIL Interim TFA and LTA Interim TFA are agreements between Hydro and those respective parties for the purposes set out in the Order in Council, O.C. 2013-343. These are agreements to which the Muskrat Falls Project Exemption Order (attached as Schedule 5) applies.

Furthermore, under Board Order No. P.U. 3(2018), made on February 9, 2018 as directed by the Order in Council, O.C. 2017-380, the Board approved, on an interim basis, the pro forma transmission service agreements, transmission rates and rate methodology, transmission policies and procedures and the Code of Conduct for transmission system operations (collectively, the “NLSO Tariff”). Rates approved under that Order include two sets of interim transmission rates:

1. Pre LIL/LTA rates - in effect upon the Board’s interim Order and includes only the forecast revenue requirement related to Hydro’s 230 kV transmission assets on the Island Interconnected System and operating costs of the Newfoundland and Labrador System Operator (“NLSO”);

⁷ Provided in Hydro’s response to Request for Information NP-NLH-115.

2. Post LIL/LTA rates - to take effect upon the LIL and LTA being made available for service⁸ and also includes the forecast revenue requirement associated with the O&M Costs attributable to the LIL and LTA.⁹

The NLSO Tariff provides for the recovery of the LIL and LTA O&M Costs in the Post LIL/LTA rates. The rates included in the NLSO Tariff were developed to ensure sufficient revenue to cover the revenue requirement of all transmission asset owners, based on the forecast use of the transmission system. To date, as forecast, Hydro is the only transmission customer of the NLSO and, therefore, upon the Post LIL/LTA rates taking effect, no contribution by third parties is anticipated. This will result in Hydro effectively paying, through these rates, the full costs that are included in the tariff. Therefore, in addition to being consistent with the Order in Council, O.C. 2013-343, the recovery of the LIL and LTA O&M Costs from Hydro's customers is also consistent with the implementation of the NLSO Tariff.

3.2 Benefits

While the NLSO Tariff provides the necessary mechanism for the recovery of the LIL and LTA O&M Costs through payment of the Post LIL/LTA rates to the NLSO and entitles Hydro to avail of the LIL and LTA, the Interim TFAs and the Guarantee provide additional commercial benefits to Hydro above and beyond that available to it under the NLSO Tariff alone.

Firstly, the Interim TFAs commit the Partnership and LTC to making the assets available for service earlier than would otherwise be required under existing arrangements.

Secondly, the Interim TFAs require Hydro and the Partnership to agree on the minimum level of transmission capacity that must be proven prior to O&M Costs being recoverable from Hydro.

⁸ These second interim rates will take effect after approval by the PUB, which will be requested no later than 7 days prior to the expected date of the LIL and LTA being made available for service.

⁹ Details of both sets of interim rates and how they have been developed can be found in Schedules F, G and H of the 2018 NLSO Application filed on February 6, 2018, and are publicly available on the NLSO Open Access Sametime Information System (<https://www.oasis.oati.com/NLSO/index.html>) under the "Transmission Rates" section.

1 This prevents Hydro from paying O&M Costs in the event that the assets are operational but
2 are unable to operate to sufficient levels to benefit Hydro and its customers.

3
4 Thirdly, the Interim TFAs commit the owners of the LIL and LTA to assign to Hydro any revenue
5 they would be entitled to receive as a result of transmission revenue collected by the NLSO.
6 This ensures that Hydro receives any excess revenue that results from actual transmission use
7 exceeding that which was forecast.

8
9 Finally, the Guarantee provides that Hydro will be compensated in the event that the
10 performance of either or both of the LIL and LTA does not allow Hydro to displace production
11 and fuel consumption at Holyrood in amounts sufficient to completely offset the O&M Costs of
12 these transmission assets.

14 **4.0 Conclusion**

15 The execution of the Interim TFAs will result in a net benefit to Hydro and its customers by
16 ensuring that the LIL and LTA will be made available for service earlier than would otherwise be
17 required. The costs associated with ensuring these assets are made available for service early
18 are anticipated to be far outweighed by the savings resulting from the use of off-island
19 purchases to displace more costly production at Holyrood. Further, the Guarantee provides
20 assurance that entering into the Interim TFAs will result in a net benefit to Hydro, which will be
21 passed on to customers of the Island Interconnected System. The executed Interim TFAs and
22 the Guarantee assist Hydro in meeting its obligation to deliver power to its customer at the
23 lowest possible cost consistent with reliable service.

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP

and

NEWFOUNDLAND AND LABRADOR HYDRO

INTERIM TRANSMISSION FUNDING AGREEMENT

August 31, 2018

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SCHEDULE 1 LIL PROJECT DESCRIPTION

SCHEDULE 2 FORM OF ASSIGNMENT

SCHEDULE 3 DISPUTE RESOLUTION PROCEDURE

SCHEDULE 4 CONFIDENTIAL INFORMATION

SCHEDULE 5 AMENDING AGREEMENT

INTERIM TRANSMISSION FUNDING AGREEMENT

THIS INTERIM TRANSMISSION FUNDING AGREEMENT is signed the 31st day of August, 2018.

AMONG:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of NL, acting by its general partner Labrador-Island Link General Partner Corporation (the “**Partnership**”)

– and –

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-17 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

WHEREAS:

- A. the Partnership, NLH and Labrador-Island Link Operating Corporation (“**Opco**”) entered into a Transmission Funding Agreement dated November 29, 2013 (the “**Existing TFA**”), which Existing TFA acknowledged, amongst other things, the following:
- I. the Parties’ and Opco’s wish to ensure the development and improvement of the Bulk Electric System in order to provide safe, reliable and efficient electric service in NL in a prompt and cost effective manner;
 - II. the LIL is integral to NLH's planned purchase and delivery of Energy and Capacity from the MF Plant, will allow NLH to rely upon the MF Plant as a secure Energy supply serving NL Customers, and will enable the closure of the Holyrood oil-fired generation plant;
 - III. the LIL will also provide NLH with the ability to (i) maximize the efficiency of its generation resources and the NL Transmission System in order to meet anticipated demand in NL, and (ii) meet NLH's Energy sale and delivery obligations under related commercial arrangements; and
 - IV. the direct cost reimbursement for the LIL by NLH will provide certainty in cost recovery for the purposes of the Financing of the LIL and will facilitate the design, engineering, construction, Commissioning, Financing, operation and maintenance of the LIL in a prompt and cost-effective manner;
- B. cost reimbursement for the LIL by NLH under the Existing TFA does not commence until the Commissioning Date;
- C. under Order No. P.U. 3(2018) of the PUB, made as directed by OC2017-380, the PUB approved on an interim basis the pro-forma transmission services agreements, transmission

rates and rate methodology, transmission policies and procedures and the code of conduct approved by the PUB for operation of NL transmission systems by the NLSO, which transmission systems include the LIL, and which rates include forecast amounts attributable to 2018 Post LIL/LTA (as defined in PUB filings);

- D. NLH wishes to have the LIL available for transmission service prior to the Commissioning Date to deliver off island power purchases to displace usage of the Holyrood oil-fired plant until the MF Plant achieves commissioning; and
- E. the Parties have agreed to enter into this Agreement for purposes of setting out the Parties respective rights and obligations related to the payment of the Interim TFA Payments by NLH to LIL.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals, and subject to **Section 1.2(h)**, in the Schedules:

“Act” means the *Limited Partnership Act* (Newfoundland and Labrador);

“Actual Annual O&M Payment” has the meaning set forth in **Section 3.3(d)**;

“Actual Quarterly O&M Payment” has the meaning set forth in **Section 3.3(b)**;

“Actual Quarterly O&M Payment Invoice” has the meaning set forth in **Section 3.3(b)**;

“Adequacy” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria and taking into account scheduled and unscheduled outages of system elements;

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person;

“Agreement” means this agreement, including all Schedules, as it may be modified, amended, supplemented or restated by written agreement among the Parties;

“Annual Maintenance Plan” means an annual maintenance plan for the LIL prepared by or for the Partnership setting out the O&M Activities to take place in each Operating Year, including required equipment outages and their durations and, where appropriate in accordance with Good Utility Practice, O&M Activities to take place in subsequent Operating Years, and containing such other information as may be determined by the Partnership;

“Annual O&M Budget” means the annual budget for O&M Activities related to the LIL prepared by or for the Partnership for an Operating Year based on the Annual Maintenance Plan for such Operating Year and the O&M Budget, and including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of, and the terms of all judgments, orders and decrees issued by, any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Bulk Electric System” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 KV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL;

“CFLCo” means Churchill Falls (Labrador) Corporation, Limited, a corporation incorporated pursuant to the laws of Canada, and includes its successors;

“CFLCo Plant” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River, in the vicinity of Churchill Falls, NL;

“Capacity” means the capability to provide electrical power, measured and expressed in MW;

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

“Claims” means any and all Losses, claims, actions, causes of action, demands, fees (including all legal and other professional fees and disbursements, court costs and experts’ fees), levies, Taxes, judgments, fines, charges, deficiencies, interest, penalties and amounts paid in settlement, whether arising in equity, at common law, by statute, or under the law

of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind or character;

“Commissioning” means the testing activities required to demonstrate the LIL is ready to transmit Energy and Capacity in accordance with the LIL Project Description, and **“Commission”** and **“Commissioned”** have a correlative meaning;

“Commissioning Date” means the date on which all of the following has occurred:

- (a) the Commissioning has been completed;
- (b) the NLSO has accepted in writing that the Commissioning has been completed; and
- (c) the Financing Parties have accepted in writing that the Commissioning has been completed.

“Confidential Information” means:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of a Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analysis, tests, specifications, charts, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party or its Affiliates; and
- (b) all summaries, notes, analysis, compilations, studies and other records prepared by the Receiving Party that contains or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in **Section (a)** of this definition;

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have a correlative meaning);

“Development Activities” means all activities and undertakings necessary to design, engineer, procure and construct the LIL in accordance with the LIL Project Description, and to Commission the LIL, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, the products of such activities and undertakings, and the resolution of all Claims and disputes related thereto;

“Direct Claim” has the meaning set forth in **Section 11.3(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of such other Party;

“Dispute” means any dispute, controversy or claim of any kind whatsoever arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Applicable Law that affects this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof;

“Dispute Resolution Procedure” has the meaning set forth in **Section 8.1(a)**;

“Effective Date” means the Mono-Pole Commissioning Date;

“Emera” means Emera Inc., a company incorporated pursuant to the laws of NS, and includes its successors;

“Energy” means electrical energy measured and expressed in MWh;

“Estimated Monthly O&M Payment” has the meaning set forth in **Section 3.2(b)**;

“Estimated O&M Payment” has the meaning set forth in **Section 3.2(b)**;

“Estimated O&M Payment Invoice” has the meaning set forth in **Section 3.2(b)**;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“Existing TFA” has the meaning set forth in the recitals of this Agreement;

“Financing” means the credit facilities granted or extended to, or invested by way of debt (or the purchase of debt) in, the Partnership with respect to the LIL, whereby or pursuant to which money, credit or other financial accommodation (including by way of hedging, derivative or swap transactions) has been or may be provided, made available or extended to the Partnership by any Person other than any of the Partners or a Retired Limited Partner or their respective Affiliates, by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation (including by way of hedging, derivative or swap transactions), in each case to finance the Development Activities;

“Financing Documents” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement

agreements, and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements, and other documents relating thereto;

“Financing Parties” means all lenders, bondholders and other creditors (including any counterparty to any hedging, derivative or swap transaction) providing any part of a Financing and any guarantor of or other provider of credit enhancement for any part of such Financing which is not an Affiliate of Nalcor, and includes all agents, collateral agents and collateral trustees acting on their behalf;

“Force Majeure” means an event, condition or circumstance (each, an **“event”**) beyond the reasonable control and without fault or negligence of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or inadvertent action or failure to act causing material physical damage to, or materially impairing the operation of, or access to the MF Plant, the LIL, the LTA or the NL Transmission System, or any machinery or equipment comprising part of, or used in connection with the MF Plant, the LIL, the LTA or the NL Transmission System;
- (e) a revocation, amendment, failure to renew or other inability to obtain or the revocation, failure to renew or other inability to maintain in force any order, permit, licence, certificate or authorization from any Authorized Authority that is required with respect to the O&M Activities, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the party seeking or holding such order, permit, licence, certificate or authorization;
- (f) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of Energy or Capacity that is required by the NLSO for the safe

and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices; and

- (g) any event or circumstance affecting an O&M Contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that such O&M Contractor is relieved from the performance of its obligations under a contract affecting a Party;

but none of the following shall be a Force Majeure:

- (h) lack of finances or changes in economic circumstances of a Party;
- (i) if the event relied upon results from a breach of Good Utility Practice by the Party claiming Force Majeure; and
- (j) any delay in the settlement of any Dispute;

“GAAP” means generally accepted accounting principles as defined by the Canadian Institute of Chartered Accountants or its successors, as amended or replaced by international financial reporting standards or as otherwise amended from time to time;

“GP” means Labrador-Island Link General Partner Corporation, a NL corporation and a wholly-owned subsidiary of Nalcor, in its capacity as general partner of the Partnership, or any Person who is a Qualified Partner and is admitted to the Partnership as a successor or assign of the GP;

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, Reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

“HSE” means health, safety and the environment;

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Holder” means “holder” as defined in the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

“Income Tax Act” means the *Income Tax Act* (Canada);

“Indemnified Party” has the meaning set forth in **Section 11.3(a)**;

“Indemnitor” has the meaning set forth in **Section 11.3(a)**;

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;
- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such

order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Interim Financing Costs” means, without duplication, all costs and expenses incurred related to the Financing of the LIL during the Interim TFA Term, including interest incurred on equity contributions from the Partners or a Retired Limited Partner or their respective Affiliates;

“Interim TFA Payments” has the meaning set forth in **Section 3.1**;

“Interim TFA Term” has the meaning set forth in **Section 9.1**;

“Island Interconnected System” means the bulk energy transmission system on the island portion of NL owned and operated by NLH;

“Knowledge” means in the case of a Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“LIL” means equipment and facilities comprising a HVdc transmission line and all related components, including converter stations, synchronous condensers, and terminal, telecommunications and switchyard equipment, constructed between the LTA and the Island Interconnected System including:

- (a) foundations, underground services, subsea services, roads, buildings, erections and structures, whether temporary or permanent;
- (b) all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attaching to the transmission lines; and

- (c) all mechanical, electrical and other systems and other technology installed under or upon any of the foregoing;

“LIL LP Agreement” means the agreement between Labrador-Island Link General Partner Corporation, as general partner, and Labrador-Island Link Holding Corporation, as limited partner, dated July 31, 2012, which establishes the Partnership;

“LIL Project Description” means a compilation of the fundamental engineering criteria, data and components on the basis of which the LIL is to be constructed as set forth in **Schedule 1**;

“LTA” means the transmission facilities to be constructed by or on behalf of Labrador Transco in Labrador including its interconnections with the MF Plant, the CFLCo Plant and the LIL;

“Labrador Transco” means Labrador Transmission Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“Losses” means any and all losses (other than losses of Energy normally incurred in the transmission of Energy), damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

“MF Plant” means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be owned and operated by Muskrat;

“MPPA” means the Multi-Party Pooling Agreement to be entered into between the NLSO and the owners or operators of transmission facilities comprising the NL Transmission System pursuant to which the NLSO shall exercise operational control of, and provide transmission service over, the NL Transmission System;

“MW” means megawatt;

“MWh” means MW hour;

“Mono-Pole Commissioning” means the successful completion of trial operation of a single pole of the LIL for a period of not less than 20 days, during which all equipment and facilities operate without interruption at power transfer levels agreed to by the Parties and the NLSO;

“Mono-Pole Commissioning Date” means the date on which all of the following has occurred:

- (a) the Mono-Pole Commissioning has been completed;

- (b) the NLSO has accepted in writing that the Mono-Pole Commissioning has been completed; and
- (c) the Partnership has provided notice in writing to the NLSO that the LIL facility rating for the purposes of commercial operation under the MPPA is no less than the power transfer level agreed to by the Parties;

“Muskrat” means Muskrat Falls Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“NL” means the Province of Newfoundland and Labrador;

“NL Crown” means Her Majesty in Right of NL;

“NL Customers” means the wholesale and retail customers of electricity throughout NL directly or indirectly connected to the NL Transmission System;

“NL Transmission System” means electricity transmission assets in NL with a voltage level greater than or equal to 230 KV to be pooled under the MPPA;

“NLH” has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

“NLH Default” has the meaning set forth in **Section 10.3**;

“NLH Indemnified Party” has the meaning set forth in **Section 11.1(a)**;

“NLSO” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the system operations department of NLH responsible for the safe and reliable operation of the Bulk Electric System or a functionally separate division of NLH performing this function, and includes any of its successors;

“Nalcor” means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“Nalcor LP” means Labrador-Island Link Holding Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“New Taxes” means:

- (a) any Tax exigible pursuant to Applicable Law which comes into force after the Effective Date; and
- (b) any change to a Tax exigible pursuant to Applicable Law which comes into force after the Effective Date;

"Notice" means a communication required or contemplated to be given by a Party to another Party under this Agreement, which communication shall be given in accordance with **Section 16.1**;

"O&M Activities" means all activities and undertakings performed by or on behalf of the Partnership during the Interim TFA Term that are required to operate, maintain and sustain the LIL in accordance with Good Utility Practice, including administration and the replacement or overhaul of major components;

"O&M Budget" means the budget prepared by or on behalf of the Partnership for the LIL setting forth the Operation and Maintenance Costs required to be made for each Operating Year during the Interim TFA Term, including the type of expenditure, the amount thereof and the schedule for making such expenditure;

"O&M Contract" means a contract to perform work or provide services, equipment, materials, facilities or supplies forming part of or procured in connection with O&M Activities;

"O&M Contractor" means a Person who enters into an O&M Contract;

"Opco" has the meaning set forth in the recitals of this Agreement;

"Operation and Maintenance Costs" means, without duplication, all costs and expenses incurred for operation and maintenance of the LIL during the Interim TFA Term, including costs of O&M Activities, including administration costs, any Taxes payable by or on behalf of the Partnership or in respect of amounts payable to the Partnership (including for greater certainty, any Taxes payable by the Partnership and required to be withheld by a Person on the payment of an amount to the Partnership), net of any such Taxes which are recovered, but grossed up and adjusted to the extent necessary so that the amount of any amounts payable to the Partnership which are retained by the Partnership, net of any such Taxes, shall equal the amount which the Partnership would have retained if such Taxes were not payable by or on behalf of the Partnership or in respect of amounts payable to the Partnership, any costs and expenditures related to insurance, including any deductibles, any amount payable on account of a penalty imposed by Applicable Law or contract, any amount payable on account of a judgment rendered against the Partnership;

"Operating Year" means (a) a calendar year during the Interim TFA Term, except that the first operating year will commence on the Effective Date and end on December 31 of the calendar year in which such date occurs, and the last operating year will end on the date of termination or expiry of the Interim TFA Term, or (b) such other 12 month period as may be mutually agreed to in writing by the Parties;

"PUB" means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

"Paid in Full" means in relation to any indebtedness that is or may become owing to any Person, the permanent, indefeasible and irrevocable payment to such Person in full of such

indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to Insolvency Events or fraudulent conveyance or any similar laws affecting creditors' rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such Person to lend or otherwise extend credit or pay any indebtedness;

"Parties" means the Partnership and NLH, and **"Party"** means one of them;

"Partners" has the meaning set forth in the LIL LP Agreement;

"Partnership" has the meaning set forth in the preamble of this Agreement, one of the Parties, and includes its successors and permitted assigns;

"Partnership Affiliate Assignee" means an Affiliate of the Partnership to which all of the Partnership Rights are assigned in accordance with the provisions of this Agreement;

"Partnership Default" has the meaning set forth in **Section 10.1**;

"Partnership Indemnified Party" has the meaning set forth in **Section 11.2(a)**;

"Partnership Rights" has the meaning set forth in **Section 14.1(a)**;

"Permits" means permits, licences, Regulatory Approvals and permissions held by the Partnership in connection with Development Activities or otherwise held by the Partnership or an Affiliate of the Partnership in connection with an activity or undertaking involving the LIL or any part of it but, for greater certainty, excluding LIL Real Property Rights;

"Person" includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

"Prime Rate" means the variable rate of interest per annum expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by The Bank of Nova Scotia, or any successor thereto, as its reference rate for the determination of interest rates that it will charge on commercial loans in Canadian dollars made in Canada;

"Qualified Assignee" means a Person which is:

- (a) an administrative or security agent of a Financing Party;
- (b) with respect to the Partnership Rights, an Affiliate or Affiliates of the Partnership, or a Holder, provided

- (i) the Partnership and such Affiliate(s) or the Partnership and such Holder, as applicable, enter into an agreement with NLH substantially in the form of **Schedule 2**; and
- (ii) there is a concurrent assignment to such Affiliate(s) or such Holder of the MPPA, this Agreement and all of the Partnership's right, title and interest in the LIL Assets and Rights;

"Qualified Partner" has the meaning set forth in the LIL LP Agreement;

"Quarter" means a calendar quarter (or portion thereof, as applicable) in an Operating Year;

"Receiving Party" means a Party or an Affiliate of a Party that receives Confidential Information from another Party or an Affiliate of another Party;

"Recipient Party" has the meaning set forth in **Section 8.2(a)**;

"Regular Business Hours" means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

"Regulatory Approval" means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

"Reliability" means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security;

"Reliability Standards" means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

"Representatives" means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party;

"Retired Limited Partner" has the meaning set forth in the LIL LP Agreement;

"Service Life of the LIL" means the period of time immediately following the Commissioning Date, as designated by an Authorized Authority, from time to time, during which the LIL can continue to transmit Energy and Capacity in accordance with Reliability Standards and the LIL Project Description, but, in the event that no such designation has been made by the time at which amounts become due and payable under this Agreement, shall be assumed to be 50 years and shall be adjusted accordingly once determined;

"Security" means the ability of an electrical system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

"Standards Authority" means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the LIL;

“Tariff Charges” means any charges arising pursuant to a tariff or other schedule of fees or rates set by the PUB in respect of electricity transmission services;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Third Party Claim” has the meaning set forth in **Section 11.3(b)**; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 **Construction of Agreement**

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) Including - The word **“including”**, when used in this Agreement, means **“including without limitation”**.
- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this

Agreement, the same shall be done in accordance with GAAP, unless expressly stated otherwise.

- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the Effective Date, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “**approved**”, “**decided**” or “**determined**” by a Party or requires a Party’s or its Representative’s “**consent**”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.

- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.
- (n) References to Other Agreements - Any reference in this Agreement to another agreement shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any document delivered pursuant to this Agreement, the provision of the body of this Agreement shall prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 8**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Effectiveness of Agreement

Notwithstanding the execution of this Agreement by the Parties, the provisions of this Agreement shall only become effective on the Effective Date.

1.6 Schedules

The following are the Schedules attached to and incorporated by reference in this Agreement, which are deemed to be part hereof:

Schedule 1 – LIL Project Description

Schedule 2 – Form of Assignment

Schedule 3 – Dispute Resolution Procedure

Schedule 4 – Confidential Information

Schedule 5 – Amending Agreement

ARTICLE 2 PURPOSE

2.1 Purpose

The purpose of this Agreement is to establish a mechanism by which NLH shall pay to the Partnership the Interim TFA Payments as consideration for the Partnership's commitment to commence Commissioning, operate, maintain and make available for commercial operations the LIL during the Interim TFA Term in accordance with the provisions of this Agreement, and the MPPA.

ARTICLE 3 INTERIM TFA PAYMENTS

3.1 NLH Obligation to Make Interim TFA Payments

NLH agrees, as of and from the Effective Date and at all times thereafter during the Interim TFA Term, to pay to the Partnership in accordance with the provisions of this Agreement (a) Operation and Maintenance Costs, and (b) subject to **Section 3.4(a)**, Interim Financing Costs (collectively the “**Interim TFA Payments**”). For greater certainty, the Parties agree that there shall be no duplication of amounts paid to LIL by NLH under this Agreement and the Existing TFA, or under Tariff Charges approved by the PUB. In the event that Interim Financing Costs are payable under both this Agreement and the Existing TFA, such amounts shall be paid in accordance with the provisions of the Existing TFA and shall be deducted from the amounts payable under this Agreement.

3.2 Interim TFA Payments Information

- (a) The Partnership shall:
 - (i) not later than the Effective Date deliver to NLH the O&M Budget;
 - (ii) not later than 60 days prior to the commencement of an Operating Year deliver to NLH the Annual O&M Budget, which Annual O&M Budget shall remain subject to approval by the Board of Directors of the general partner of the Partnership, being Labrador Island Link General Partner Corporation;
 - (iii) within 30 days of receipt of any information which would increase or decrease the Annual O&M Budget by \$1,000,000 or more, deliver to NLH a revised Annual O&M Budget; and
 - (iv) deliver the budget information as set forth in this **Section 3.2(a)** in sufficient detail for NLH to plan for cost recovery.

- (b) O&M Payments – The Partnership shall, not later than the Effective Date (and thereafter not later than 60 days prior to the commencement of each Operating Year), deliver to NLH a Notice (the “**Estimated O&M Payment Invoice**”) setting out the Partnership’s estimate of the Operation and Maintenance Costs payable to the Partnership, in each case, for the following Operating Year (the “**Estimated O&M Payment**”). The Estimated O&M Payment Invoice shall set out the monthly payment due for each calendar month (or part thereof) in the applicable Operating Year (the “**Estimated Monthly O&M Payment**”).

3.3 Payment of Operation and Maintenance Costs

- (a) Estimated O&M Payment – NLH shall pay to the Partnership on the first Business Day of each and every calendar month during the Interim TFA Term, the Estimated Monthly O&M Payment for the preceding month.
- (b) Actual TFA Payment - Within 15 days after the end of each Quarter or partial Quarter during which Estimated Monthly O&M Payments have been paid by NLH to the Partnership, the Partnership shall deliver to NLH a Notice (the “**Actual Quarterly O&M Payment Invoice**”) setting out the actual Operation and Maintenance Costs payable for the previous Quarter (the “**Actual Quarterly O&M Payment**”). The Actual Quarterly O&M Payment Invoice shall contain a summary of the Operation and Maintenance Costs incurred during the applicable Quarter, and such other detail and supporting documentation as reasonably required by NLH to review the calculation of the Actual Quarterly O&M Payment.
- (c) Quarterly Adjustment - Should the Actual Quarterly O&M Payment exceed the sum of the Estimated Monthly O&M Payments paid during the applicable Quarter, NLH shall pay to the Partnership within 10 days of receipt by NLH of the Actual Quarterly O&M Payment Invoice the amount by which the Actual Quarterly O&M Payments exceed the sum of the Estimated Monthly O&M Payments paid for the applicable Quarter. Should the Actual Quarterly O&M Payments be less than the sum of the Estimated Monthly O&M Payments paid by NLH for the applicable Quarter, the Partnership shall within 10 days of delivery by the Partnership of the Actual Quarterly O&M Invoice, at NLH’s election, either: (i) pay to NLH the amount by which the sum of the Estimated Monthly O&M Payments paid for the applicable Quarter exceeds the Actual Quarterly O&M Payments; or, (ii) deliver to NLH a Notice authorizing NLH to credit against future Estimated Monthly O&M Payments, the amount by which the sum of the Estimated Monthly O&M Payments paid for the applicable Quarter exceeds the Actual Quarterly O&M Payment.
- (d) Annual Adjustment - Within 30 days after the end of the prior Operating Year, the Partnership shall deliver to NLH a Notice setting out the actual amount of the Operation and Maintenance Costs which was required to be paid by NLH to the Partnership for the prior Operating Year (“**Actual Annual O&M Payment**”), addressing in detail and with supporting documentation, any discrepancies from the total sum of Actual Quarterly O&M Payments paid by NLH over such Operating Year.

The amount (whether positive or negative) by which the Actual Annual O&M Payment differs from the total sum of the Actual Quarterly O&M Payments paid for such Operating Year shall be adjusted between the Partnership and NLH such that, if the Actual Annual O&M Payment is more than the total sum of the Actual Quarterly O&M Payments paid for the Operating Year, NLH shall within 10 days of delivery by the Partnership of the applicable Notice pay the difference to the Partnership, and if the Actual Annual O&M Payment is less than the total sum of the Actual Quarterly O&M Payments paid for the Operating Year, the Partnership shall within 10 days of delivery by the Partnership of the applicable Notice, at NLH's election, either: (i) pay the difference to NLH; or, (ii) deliver to NLH a Notice authorizing NLH to credit the difference against future Estimated Monthly O&M Payments.

- (e) Further Adjustments - After the annual adjustment is made pursuant to **Section 3.3(d)**, should a Party discover or obtain written evidence of an overpayment or an underpayment of Interim TFA Payments for a previous Operating Year, such Party shall forthwith provide Notice of the overpayment or underpayment and the supporting documentation in its possession to the other Party. On verification of the overpayment or underpayment by the other Party or, if applicable, pursuant to the Dispute Resolution Procedure, the payment of funds to address such overpayment or underpayment shall be made by the applicable Party within 10 days.

3.4 **Interim Financing Costs**

- (a) The Parties agree that accrual of the Interim Financing Costs owed by NLH to the Partnership shall be conditional upon NLH obtaining the approval of the PUB to establish a deferral account whereby the Interim Financing Costs are deferred for recovery from NLH's customers, which recovery shall commence not sooner than the Commissioning Date.
- (b) The Parties further agree that, upon fulfillment of the condition outlined in **Section 3.4(a)**, the Parties shall enter into an Amending Agreement substantially in the form set out in **Schedule 5** attached hereto.

3.5 **Changes to Timing of Payment**

The Parties agree to exchange information and, if necessary, to adjust the timing of payment of Interim TFA Payments as provided for in this Agreement to enable the timing of such payments to align as closely as is reasonably possible to the timing of payments required under the Financing Documents.

3.6 **Interest on Overdue Amounts**

- (a) NLH - If NLH fails to pay on the due date any amount payable to the Partnership pursuant to this Agreement, including the adjustment provisions set forth in **Sections 3.3** and **3.4**, NLH shall pay interest to the Partnership on such unpaid amount from the due date or, as the case may be, the date of demand to the date of

actual payment (after as well as before judgment) at a rate equal to the default rate of interest set forth in the Financing Documents.

- (b) Partnership - If the Partnership fails to pay on the due date any refund amount payable to NLH pursuant to the adjustment provisions set forth in **Section 3.3**, the Partnership shall pay interest to NLH on such unpaid amount from the due date or, as the case may be, the date of demand to the date of actual payment (after as well as before judgment) at a rate equal to NLH's last approved Weighted Average Cost of Capital (WACC).

3.7 Notice to the NLSO

- (a) Forthwith on receiving any payments from NLH pursuant to the provisions of this Agreement, the Partnership shall provide written notice of receipt to the NLSO in order for the NLSO to account for such payments through credits against NLH's payment obligations arising under any transmission service agreements to which NLH may be a party.
- (b) No later than the Effective Date, LIL shall provide an assignment notice to the NLSO in accordance with Section 6.5(c) of the MPPA.

**ARTICLE 4
OTHER OBLIGATIONS**

4.1 General Covenants of the Partnership

As of and from the Effective Date, the Partnership covenants and agrees to:

- (a) provide adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations under this Agreement, including professional engineers and procurement, project management and operating and maintenance personnel; and
- (b) obtain and maintain in good standing all Regulatory Approvals required for the O&M Activities.

4.2 Operations and Maintenance Covenants

As of and from the Effective Date, the Partnership covenants and agrees to keep the LIL in a good and reasonable state of repair consistent with Good Utility Practice and to that end, the Partnership shall:

- (a) perform, or cause to be performed, all O&M Activities in accordance with this Agreement;
- (b) prepare the Annual Maintenance Plan in consultation with NLH;

- (c) ensure that all O&M Activities are conducted pursuant to the Annual Maintenance Plan, with only those variations as are necessary and appropriate for the operation and maintenance of the LIL in accordance with Good Utility Practice;
- (d) in the conduct of all O&M Activities:
 - (i) apply methods and practices customarily applied by experienced utility operators in other similar circumstances;
 - (ii) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;
 - (iii) comply with all regulatory requirements of all Authorized Authorities; and
 - (iv) comply with Good Utility Practice;
- (e) comply with all Applicable Law (including rules governing the operation of the NL Transmission System to the extent applicable), Reliability Standards, as required by all Authorized Authorities in NL, and relevant Regulatory Approvals;
- (f) comply with all operating and maintenance requirements applicable to the LIL under the MPPA;
- (g) prepare the O&M Budget and an Annual O&M Budget in consultation with NLH;
- (h) not do or suffer any waste or damage to the LIL (other than reasonable wear and tear), nor permit operation of the LIL outside the design parameters of the LIL;
- (i) enter or cause to be entered into O&M Contracts as are reasonably necessary to carry out the O&M Activities; and
- (j) perform or cause to be performed the O&M Activities in a manner that is in compliance with all Applicable Law pertaining to HSE and that is designed to avoid material adverse impacts on the safety or health of people, property and the environment.

4.3 Ancillary Agreements

The Partnership shall perform its obligations under:

- (a) the Transmission Asset Interconnection Agreement (LIL – LTA at Muskrat Falls) between the Partnership, Opco and Labrador-Transco;
- (b) the Transmission Asset Interconnection Agreement (LIL-NLH) between the Partnership, Opco and NLH; and
- (c) the MPPA.

ARTICLE 5 INFORMATION, ACCESS AND REPORTING

5.1 Records and Audits

Each Party shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Interim TFA Term shall be maintained for the Interim TFA Term; all other documents shall be retained for the longer of (a) any period prescribed by Applicable Law, and (b) at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Parties reasonable access to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Parties to comply with their respective obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Each Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for in this Agreement. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

5.2 Access to the LIL

Each Party shall have the right, from the Effective Date through to the date which is one year after end of the Interim TFA Term, upon reasonable advance Notice to the other Parties, to access the LIL for the sole purpose of examining the LIL or the conduct of the O&M Activities in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the LIL and shall not compromise the safety of persons or property. While accessing the LIL, the Parties and their Representatives shall follow all rules and procedures established for visitors to the site which are related, but not limited, to safety and security. The inspection of the LIL or the exercise of any audit rights or the failure to inspect the LIL or to exercise audit rights by or on behalf of a Party shall not relieve another Party of any of its obligations under this Agreement. No Partnership Default or NLH Default will be waived or deemed to have been waived solely by any inspection by or on behalf of a Party. In no event will any inspection by a Party hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

5.3 Communications with Authorized Authorities

Each Party, with respect to the LIL, shall, upon request by another Party, provide such other Party with copies of all communications and correspondence to and from Authorized Authorities.

ARTICLE 6 RESERVATION

6.1 Control of LIL

The Parties hereby agree and acknowledge that NLH's agreement to directly pay the Partnership the Interim TFA Payments under this Agreement does not grant NLH any control over the operation of the LIL or any right to receive transmission service offered over the LIL by virtue of this Agreement. Notwithstanding the foregoing, the Parties acknowledge that the LIL shall be integrated into the NL Transmission System and NLH shall acquire any transmission service rights over the LIL through the execution of transmission service agreements with the NLSO.

ARTICLE 7 TAXES

7.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Except as otherwise provided, each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 7.1(c)**,
 - (i) if the Partnership is required by Applicable Law to remit or pay Taxes which are NLH's responsibility hereunder, the Partnership shall first offset the amount of Taxes so recoverable from other amounts owing by it to NLH under this Agreement, and NLH shall promptly reimburse the Partnership for such Taxes to the extent not so offset;
 - (ii) if NLH is required by Applicable Law to remit or pay Taxes which are the Partnership's responsibility hereunder, NLH shall first offset the amount of Taxes so recoverable from other amounts owing by it to the Partnership under this Agreement, and the Partnership shall promptly reimburse NLH for such Taxes to the extent not so offset;
 - (iii) nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.
- (c) HST - Notwithstanding **Sections 7.1(a)** and **7.1(b)**, the Parties acknowledge and agree that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such

amounts and shall be paid, collected and remitted in accordance with Applicable Law;

- (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to another Party, such amount shall first be increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
 - (iii) if one Party is required to collect Taxes from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 7.3**; and
 - (iv) if one Party incurs an expense as agent for another Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by such other Party to claim, and shall cooperate with such other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 7.1(b)** and **7.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) NLH is solely responsible for the payment of income taxes and HST payable by NLH; and
 - (ii) the Partnership is solely responsible for the payment of income taxes and HST payable by the Partnership.

7.2 **Determination of Value for Tax Compliance Purposes**

- (a) Subject to the right of final determination as provided under **Section 7.2(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

7.3 Invoicing Tax Requirement

All invoices, as applicable, issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

7.4 Payment and Offset

- (a) Subject to **Section 7.4(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

7.5 HST Registration Status and Residency

- (a) NLH represents and warrants that it is registered for purposes of the HST and that its registration number is 1213 94928 RT0001, and undertakes to advise the Partnership of any change in its HST registration status or number.
- (b) The Partnership represents and warrants that it is registered for purposes of the HST and that its registration number is 8063 71100 RT0001, and undertakes to advise NLH of any change in its HST registration status or number.
- (c) NLH represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise the Partnership of any change in its residency status.
- (d) The Partnership represents and warrants that it is a Canadian partnership for the purposes of the Income Tax Act, and undertakes to advise NLH of any change in its status as a Canadian partnership.

7.6 Cooperation to Minimize Taxes

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Law, so long as a Party is not materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Law in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).

7.7 Additional Tax Disclosure

Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide to the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:

- (a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
- (b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and
- (c) any other fact or circumstance within the knowledge of a Party which the other Party advises the first Party, in writing, is relevant to a determination by such other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

In addition to the notification required under this **Section 7.7**, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Sections 7.7(a)** through **7.7(c)**.

7.8 Prohibited Tax Disclosure

Except as required by Applicable Law, notwithstanding any other provision of this Agreement, each Party shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of the other Party to an Authorized Authority without the prior written consent of such other Party.

7.9 **Withholding Tax**

If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Laws, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, a Party shall deliver to such other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of such other Party.

7.10 **Tax Indemnity**

Each Party (in this **Section 7.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 7** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 7.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

- (a) any and all Taxes imposed by any Authorized Authority on the other Party in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the First Party to pay any and all Taxes imposed as stated herein; and
- (b) any and all Taxes imposed by any Authorized Authority in respect of the supplies contemplated by this Agreement, and any and all Claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the First Party to pay any and all Taxes imposed as stated herein.

7.11 **Additional Tax Indemnity**

If one Party (in this **Section 7.11** referred to as the “**First Party**”) is, at any time, a non-resident of Canada for the purposes of the Income Tax Act or the Applicable Law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this **Section 7.11** referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:

- (a) any such amount payable by such other Party pursuant to this **Section 7.11** shall be reduced by the amount of such Taxes, if any, which such other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
- (b) for greater certainty, this **Section 7.11** shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by such other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on such other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

7.12 Assignment

Notwithstanding any other provision in this Agreement and only to the extent an assignment has been authorized in accordance with this Agreement, a Party shall not assign any of its interest in this Agreement to another Person unless:

- (a) the Person is registered for HST purposes and provides the other Parties with its HST registration number in writing prior to such Assignment;
- (b) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Parties of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Section 7.12** and **Article 14**.

ARTICLE 8 DISPUTE RESOLUTION

8.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 3** (the “**Dispute Resolution Procedure**”).
- (b) Disputed Payment - Notwithstanding any other provision of this Agreement, if the amount or timing of any payment is disputed by a Party, the Party liable to pay shall make the payment in full on the date such payment is required, prior to initiating any Dispute Resolution Procedure relating thereto. The Parties further agree that any payment to be received by it from another Party as a result of a Dispute Resolution Procedure shall be unsecured and fully subordinated in all respects to all amounts owed to the Financing Parties pursuant to the Financing Documents.
- (c) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings

pursuant to this **Article 8**, without prejudice to their rights pursuant to this Agreement.

- (d) Directions under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

8.2 **Procedure for Inter-Party Claims**

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the “**Claiming Party**”) intending to assert a Claim against the other Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly give the Recipient Party Notice shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure of the Claiming Party to promptly give Notice.
- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 9 **TERM AND TERMINATION**

9.1 **Interim TFA Term**

The term of this Agreement (the “**Interim TFA Term**”) shall commence on the Effective Date and shall terminate in accordance with **Section 9.2**. For greater certainty, the Parties hereby acknowledge and agree that NLH shall have no obligation to make any payment of any amount under this Agreement until the Effective Date.

9.2 Termination

This Agreement shall terminate on the first to occur of:

- (a) the Commissioning Date; and
- (b) the date set forth in a written agreement of the Parties to terminate.

9.3 Effect of Termination

- (a) Obligations on Termination - When this Agreement terminates:
 - (i) each Party shall promptly return to the other Parties, as applicable, all Confidential Information of the other Parties in the possession of such Party, and destroy any internal documents that contain any Confidential Information of the other Parties (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law which shall continue to be held in accordance with the provisions of **Section 13.1**); and
 - (ii) a Party shall not have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 9.3**.
- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
 - (i) payment of the Interim Financing Costs, as set out in **Section 3.4**;
 - (ii) the final settlement of all accounts between the Parties, including, without limitation, any payments required to be made by a Party pursuant to **Article 3** after the date of termination;
 - (iii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;
 - (iv) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement;
 - (v) information and access as set forth in **Sections 5.1** and **5.2**; and
 - (vi) any other obligations that survive pursuant to **Section 16.13**.

**ARTICLE 10
DEFAULT AND REMEDIES**

10.1 Partnership Events of Default

The occurrence of one or more of the following events shall constitute a default by the Partnership under this Agreement (a “**Partnership Default**”):

- (a) the Partnership fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement which failure is not cured within five days after the receipt of Notice from NLH that such amount is due and owing;
- (b) the Partnership is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.1(a)** and **10.1(f)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by the Partnership of Notice thereof from NLH, unless the cure reasonably requires a longer period of time and the Partnership is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by NLH;
- (c) any representation or warranty made by the Partnership in this Agreement is false or misleading in any material respect;
- (d) the Partnership ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets;
- (e) any Insolvency Event occurs with respect to the Partnership; or
- (f) the Partnership is in default or in breach of any term, condition or obligation under the Financing Documents, which results in a payment obligation by the Partnership arising from an indemnity obligation set forth in the Financing Documents.

10.2 NLH Remedies upon a Partnership Default

- (a) General - Upon the occurrence of a Partnership Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) NLH shall be entitled to exercise all or any of their respective rights, remedies or recourse available to them under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to NLH are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to this **Section 10.2** and **Article 12**, NLH may recover all Losses suffered by it that result from a Partnership Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by NLH to recover any amounts owed to it by the Partnership under this Agreement.

10.3 NLH Events of Default

The occurrence of one or more of the following events shall constitute a default by NLH under this Agreement (a “**NLH Default**”):

- (a) NLH fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within five days after the receipt of Notice from the Partnership that such amount is due and owing;
- (b) NLH is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NLH of Notice thereof from the Partnership, unless the cure reasonably requires a longer period of time and NLH is diligently pursuing the cure, and it is cured within such longer period of time as is agreed the Partnership;
- (c) any representation or warranty made by NLH in this Agreement is false or misleading in any material respect;
- (d) NLH ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; or
- (e) any Insolvency Event occurs with respect to NLH.

10.4 Partnership Remedies upon a NLH Default

- (a) General - Upon the occurrence of a NLH Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) the Partnership shall be entitled to exercise all or any of its respective rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to the Partnership are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to this **Section 10.4** and **Article 12**, the Partnership may recover all Losses suffered by it that result from a NLH Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by the Partnership to recover any amounts owed to it by NLH under this Agreement.

10.5 **Equitable Relief**

Nothing in this **Article 10** will limit or prevent a Party from seeking equitable relief, including specific performance or a declaration to enforce the other Party's obligations under this Agreement.

10.6 **Force Majeure**

Other than an obligation to pay or spend money including **Section 3.1**, in the event that a Party is delayed, hindered or prevented from the performance of any act required by this Agreement by reason of Force Majeure, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such Force Majeure.

ARTICLE 11
LIABILITY AND INDEMNITY

11.1 **NLH Indemnity**

- (a) NLH shall indemnify, defend, reimburse, release and save harmless the Partnership, the GP, their respective Representatives, and each of their successors and permitted assigns (each such Person, a "**NLH Indemnified Party**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any NLH Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
- (i) any inaccuracy or breach of any representation or warranty made by NLH in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of NLH in this Agreement or any document or instrument delivered pursuant to this Agreement;
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of NLH occurring in connection with, incidental to or resulting from NLH's obligations under this Agreement or any document or instrument delivered pursuant to this Agreement;
 - (iv) any failure by NLH to duly and punctually pay in full all amounts claimed under any invoice as and when provided under **Section 3.3** or any other amounts payable by NLH under the terms hereof; or

- (v) any loss of any right of any NLH Indemnified Party against NLH in respect of any amounts payable by NLH hereunder for any reason whatsoever, including by operation of any bankruptcy, insolvency or similar such laws, any laws affecting creditors' rights generally or general principles of equity.
- (b) Notwithstanding the foregoing, NLH shall have no obligation to indemnify, defend, reimburse, release or save harmless any NLH Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such NLH Indemnified Party.

11.2 Partnership Indemnity

- (a) The Partnership shall indemnify, defend, reimburse, release and save harmless NLH, its Representatives, and each of their successors and permitted assigns (each such Person, a **"Partnership Indemnified Party"**) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any Partnership Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
 - (i) any inaccuracy or breach of any representation or warranty made by the Partnership in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of the Partnership in this Agreement or any document or instrument delivered pursuant to this Agreement; or
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of the Partnership occurring in connection with, incidental to or resulting from the Partnership's obligations under this Agreement or any document or instrument delivered pursuant to this Agreement;
- (b) Notwithstanding the foregoing, the Partnership shall have no obligation to indemnify, defend, reimburse, release or save harmless any Partnership Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such Partnership Indemnified Party.

11.3 Indemnification Procedure

- (a) Generally - Each Party (each, an **"Indemnitor"**) shall indemnify and hold harmless the other Party and the other Persons as set forth in **Sections 11.1 and 11.2**, as applicable, (each, an **"Indemnified Party"**) as provided therein in the manner set forth in this **Section 11.3**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party,

the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. Such Notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a “**Third Party Claim**”) or whether the Claim does not so arise (a “**Direct Claim**”). The failure to promptly give the Indemnitor Notice hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure of the Indemnified Party to promptly give Notice.

- (c) Direct Claims - With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnitor shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnitor the information relied upon by the Indemnified Party to substantiate the Claim, together with all such other information as the Indemnitor may reasonably request. If the Indemnified Party and the Indemnitor agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnitor shall immediately pay to the Indemnified Party, or expressly agree with the Indemnified Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.
- (d) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 11.3** at the Indemnitor’s own expense and by the Indemnitor’s own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (e) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor’s receipt of the Indemnified Party’s Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such

Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in this **Section 11.3**.

- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not compromise, make any admission of liability regarding, or enter into any settlement or compromise of any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.
- (g) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its Representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable third party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.
- (h) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.
- (i) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or

proceeding arising from such Third Party Claim include the Indemnitor and an Indemnified Party, and such Indemnified Party has reasonably concluded that counsel selected by the Indemnitor has a conflict of interest (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to participate in the defense of such Third Party Claim on behalf of the Indemnified Party, and all other provisions of this **Section 11.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

11.4 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured claim, neither the Indemnified Party nor the Indemnitor, as the case may be, shall negotiate, settle, retain counsel to defend or defend any such Claim, without having first obtained the prior approval of the insurer(s) providing such insurance coverage.

**ARTICLE 12
LIMITATION OF DAMAGES**

12.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 11** and **Article 12** of this Agreement shall apply to any and all Claims.

12.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall a Party be liable to another Party for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement, except that such consequential, incidental, indirect or punitive damages awarded against a Party with respect to matters relating to the LIL, in favour of a third party, shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 12.2**. For the purposes of this **Section 12.2**, lost revenues or profits shall be considered to be consequential, incidental or indirect damages.

12.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to:

- (a) any insurance proceeds received or entitled to be received in relation to the Claim; and
- (b) the value of any related, determinable Tax benefits realized or capable of being realized by the affected Party in relation to the occurrence of such net loss or cost.

ARTICLE 13 CONFIDENTIALITY

13.1 Obligations of Confidentiality

The provisions of **Schedule 4** shall apply to Confidential Information.

13.2 Disclosure of Agreement

Each Party hereby agrees to the other Parties making this Agreement public at any time and from time to time after the Effective Date.

ARTICLE 14 ASSIGNMENT AND CHANGE OF CONTROL

14.1 Partnership Assignment Rights

- (a) General - Except to a Qualified Assignee and subject to **Sections 14.1(f)** and **14.1(d)**, the Partnership shall not assign its interest or rights under this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “Partnership Rights”).
- (b) Agreement to be Bound - No assignment may be made of the Partnership Rights by the Partnership unless such assignment includes all of the Partnership Rights and the Partnership obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned Partnership Rights.
- (c) Change of Control - A change of Control of a Partnership Affiliate Assignee that would result in such Partnership Affiliate Assignee no longer being an Affiliate of the Partnership will be deemed to be an assignment of the Partnership Rights in contravention of this **Section 14.1**.
- (d) Consent Requirement - An assignment of the Partnership Rights to a Person other than an Affiliate of the Partnership, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of NLH.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.1** will be null and void.
- (f) Assignment to Opco – Notwithstanding any other provision of this Agreement, including, without limitation, this **Section 14.1**, the Partnership may assign its right

to collect any and all payment owing by NLH under this Agreement to Opco by providing Notice to NLH. Such assignment shall not require prior consent of NLH. For greater certainty, assignment of the Partnership's right to collect payment under this **Section 14.1(f)** shall not require that Opco enter into an assignment agreement with NLH, substantially in the form set out in **Schedule 2** or otherwise, and such assignment shall not alter in any way the other rights or obligations of the Partnership or NLH under this Agreement.

14.2 **NLH Assignment Rights**

- (a) General - NLH shall not assign this Agreement, its interests or rights hereunder, any Claim or any other agreement relating to any of the foregoing.
- (b) Non-Permitted Assignment - Any purported assignment in contravention of this **Section 14.2** will be null and void.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1 **NLH Representations and Warranties**

NLH represents and warrants to the Partnership that, as of the Effective Date:

- (a) it is duly created and validly existing under the laws of NL and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of NLH and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by NLH for NLH's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on NLH's ability to perform its obligations under this Agreement, and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

15.2 Partnership Representations and Warranties

The Partnership represents and warrants to NLH that, as of the Effective Date:

- (a) it is a limited partnership duly organized, validly existing and in good standing under the laws of NL;
- (b) the GP is duly organized, validly existing and in good standing under the laws of NL;
- (c) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action on the part of the GP and the Partnership and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (d) this Agreement has been duly executed and delivered on its behalf by the GP and constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (e) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (f) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (g) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by the Partnership for the Partnership's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be

expected to have, a material adverse effect on the Partnership's ability to perform its obligations under this Agreement, and (iii) the Regulatory Approvals; and

- (h) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

- (a) to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive
P.O. Box 12400, Station A
St. John's, NL
A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

- (b) to the Partnership:

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership.
500 Columbus Drive
P.O. Box 13000, Station A
St. John's, NL
A1B 0M1
Attention: Corporate Secretary
Fax: (709) 737-1782

with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, be deemed to have been given or made on the day it was successfully transmitted as evidenced by automatic confirmation of receipt; provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Each Party may change its address or fax number hereunder from time to time by giving Notice of such change to each of the other Parties.

16.2 Prior Agreements

With the exception of the Existing TFA, this Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein.

16.3 Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

16.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

16.5 Announcements

No announcement with respect to this Agreement shall be made by a Party without the prior approval of the other Parties. The foregoing shall not apply to (a) disclosure of this Agreement pursuant to **Section 13.2**, and (b) any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with each of the other Parties before making any such announcement and gives due consideration to the views of each of the other Parties with respect thereto. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

16.6 Relationship of the Parties

Each Party hereby disclaims any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship with another Party. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the matters set forth herein shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as

constituting any Party as the agent or legal representative of another Party for any purpose nor to permit a Party to enter into agreements or incur any obligations for or on behalf of another Party.

16.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

16.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith and execute a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

16.9 Time of the Essence

Time shall be of the essence.

16.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all of the Parties.

16.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of such Party or otherwise reduce the obligations of the Party receiving such consent or approval.

16.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a Party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

16.13 Survival

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties arising out of this Agreement. All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

16.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

16.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.


16.16 Affiliates of Nalcor


Notwithstanding any other provision of this Agreement, the NL Crown shall be deemed to not be an Affiliate of Nalcor, Opco, NLH, the Partnership, the GP or Nalcor LP.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

LABRADOR-ISLAND LINK PARTNERSHIP, by its
general partner, LABRADOR-ISLAND LINK GENERAL
PARTNER CORPORATION

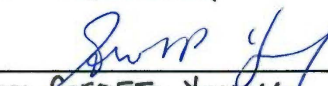
By: 
Name: John H. MacIsaac
Title: Executive Vice President
Power Supply

By: 
Name: James Meaney
Title: VP Finance Power Supply

We have authority to bind the general partner; the
general partner has authority to bind the Partnership.

NEWFOUNDLAND AND LABRADOR HYDRO

By: 
Name: JAMES R. HAYNES
Title: PRESIDENT

By: 
Name: GEOFF YOUNG
Title: CORPORATE SECRETARY AND
GENERAL COUNSEL

We have authority to bind the corporation.

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 1

LIL PROJECT DESCRIPTION

SCHEDULE 1 LIL PROJECT DESCRIPTION

Section 1 Labrador - Island Link (LIL)

Overall HVdc system consists of a 900 MW HVdc Island Link between Labrador and Newfoundland.

Section 2 Construction Power

The following power supply sources will be used for construction power:

- Muskrat Falls: A 25 kV tap from the construction power system for the Muskrat Falls Generating Facility (see Construction Power)
- Forteau Point: A 25 kV tap from an existing distribution system located approximately 2.5 km away.
- Shoal Cove: A 25 kV tap from an existing distribution system located approximately 700m away.
- L'Anse Au Diable: A 14.4 kV tap from an existing distribution system located approximately 400 m away.
- Dowden's Point: A 14.4 kV tap from an existing distribution system located approximately 1.5 km away.
- Soldiers Pond: A 25 kV tap from an existing distribution system located approximately 4 km away.

Section 3 Construction Telecommunication Systems - Labrador-Island Link

Provision of telecommunications services and infrastructure during the construction phase to the end of the Project along the 315 kV HVac and the ± 350 kV HVdc transmission lines and associated construction camps, including the CF Extension Switchyard construction camp.

- Services along the transmission line rights-of-way
- Land Mobile Radio System (LMRS)
- Services available at the various remote campsites
- Data (corporate and personal)
- Telephony (corporate and personal)
- Network Management System (NMS)
- Closed Circuit Television (CCTV) and
- Security and Access Control System (SACS)

Section 4 Labrador Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- Situated on the south side of the Churchill River on a level fenced site.

- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 5 Electrode Line - Labrador

- An *electrode line* carrying two conductors with the first 370 km to be supported on the HVdc lattice steel towers from Muskrat Falls to Forteau Point and the remaining section from Forteau Point to L'Anse au Diable to be supported on a wood pole line.
- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 6 Electrode Labrador

- A shoreline pond *electrode* to be located at L'Anse au Diable on the Labrador side of the SOBI.
- Nominal monopolar rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.

Section 7 Labrador - Island Overland HVdc Transmission

- An HVdc overhead transmission line, ± 350 kV bi-pole, to connect the Muskrat Falls *Converter Station* to the Labrador Transition Compound at the Strait of Belle Isle and then to connect the Northern Peninsula Transition Compound at the Strait of Belle Isle to the Soldiers Pond *Converter Station*.
- Transmission line to carry both poles (single conductor per pole) and one OPGW. The Labrador section is to carry two *electrode* conductors from the Muskrat Falls *Converter Station* to Forteau Point (see 6310 Electrode Line - Labrador).
- The HVdc transmission line is to have a designed nominal power capacity of 900 MW; however, given the mono-polar operation criteria, each pole is to have a nominal rating of 450 MW with 100% overload capacity for ten minutes and 50% overload capacity for continuous operation.
- *Counterpoise* installed from station-to-station.
- Towers are to be galvanized lattice steel, with self-supported angles and dead ends, and guyed suspension towers.
- 50 year *Reliability Level Return Period* of loads, with respect to Nalcor Energy operating experience and LCP specific modeling and test programs.

Section 8 Transition Compound - Labrador

- Situated on a level fenced site at Forteau Point.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Overhead line to cable transition equipment.

- High-speed switching, control, protection, monitoring and communication equipment.

Section 9 Marine Crossing - SOBI - General

- ± 350 kV, 900 MW submarine cable system to transmit power across the SOBI in bipolar mode for 50-year design life, with capabilities to allow configuration in monopolar mode.
- Each cable to have a nominal rating of 1286 A (one pu per pole) and a transient rating of 2572 A (two pu per pole) for five minutes in mono-pole mode.
- Consists of three *mass impregnated* submarine cables and associated components, inclusive of one spare submarine cable.
- Land cables shall connect submarine cables to cable termination system within the transition compound.
- The route for the submarine cable(s) crossing shall be designed to meet the transmission, protection, reliability, and design life requirements, and give consideration to technical and economic optimization.
- Cables shall be adequately protected along the entire length of the crossing as required. Cable protection methodology will employ proven technologies only, and may include rock placement, trenching, horizontal directional drilling (HDD) and concrete mattresses.
- Where discrete protection application is required, protection measures shall be designed to meet the transmission and reliability requirements.

Section 10 Transition Compound - Northern Peninsula

- Situated on a level fenced site at Shoal Cove.
- Enclosed building and provision for submarine cable termination system and associated switching requirements.
- Concrete pads and steel structures to support the electrical equipment and switchgear.
- Cable to overhead line transition equipment.
- High-speed switching, control, protection, monitoring and communication equipment.

Section 11 Soldiers Pond Converter Station

- 900 MW, ± 350 kV bi-pole, LCC *converter station* capable of operating in mono-polar mode.
- Each pole rated at 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.
- Situated next to the Soldiers Pond switchyard on the Avalon Peninsula on a level fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Mono-polar operation shall be supported by an *electrode*.

Section 12 Electrode Line - Newfoundland East

- An *electrode line* carrying two conductors generally follows the existing transmission ROW from Soldiers Pond to Conception Bay.
- Wood pole construction.

- 50-year *Reliability Level Return Period* of loads.
- *Electrode line* will have provision for arcing horns.

Section 13 Electrode Newfoundland East

- A shoreline pond *electrode* to be located at Dowden's Point on the east side of Conception Bay.
- Nominal rating of 450 MW with 100% overload protection for ten minutes and 50% overload protection for continuous operation.

Section 14 Soldiers Pond Switchyard

- Situated on the north-east side of Soldiers Pond on a level, fenced site.
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Electrical layout of the switchyard is to be in accordance with the proposed SLD.
- Switchyard to interconnect six 230 kV HVac transmission lines (three existing transmission lines looped in), the synchronous condensers and the Soldiers Pond *Converter Station*.

Section 15 Island System Upgrades East

- Three 175 MVAR high-inertia synchronous condensers at Soldiers Pond.
- 230 kV circuit breaker replacements including Holyrood, B1B11, B1L17, B12L17, B2B11, B2L42, B12L42, B2L18, B3B13 and B12B15 and Bay d'Espoir B4B5.
- 66 kV circuit breaker replacements including Hardwoods B7T1, B7T5 and B7B8 230 kV and 138 kV circuit breaker replacements.
- Replacement of conductors, 230 kV transmission line - Bay d'Espoir to Sunnyside.
- Splitting and Re-termination of three existing 230 kV transmission lines (TL201, TL217 and TL242) into the new Soldier's Pond Terminal Station forming six 230 kV line terminations. This requires construction of 6 x 1.6 km of 230 kV transmission line complete with overhead ground wire to provide lightening protection for the six new transmission line terminations.
- Upgrade of the protection and control systems at Hardwoods, Oxen Pond, Holyrood and Western Avalon Terminal Stations.

Section 16 Operations Telecommunications System - Island Link

- Telecommunication System shall be comprised of three separate layers: Optical Transport Network (OTN), Convergence, and Access Layers.
- OTN Layer shall be the telecommunications backbone and utilize the OPGW, All Dielectric Self Supporting (ADSS) or equivalent fibre optic infrastructure. The OTN Layer equipment nodes shall be designed based upon the least total cost of ownership alternative.
- Convergence Layer shall be based on the Synchronous Optical Network (SONET) international standard. It shall be used to create logical point-to-point telecommunication links between all MF locations. It will multiplex and de-multiplex the Access Layer subsystems for transmission on the OTN.

- Access Layer shall be based on the Ethernet (IEEE 802.3) standard. It shall be comprised of a minimum of three separate telecommunication systems: Protection and Control, SCADA, and Administrative systems. The Administrative system may include the following subsystems: telephony, corporate data, security access control system, and video surveillance.

The Island Transmission Link Telecommunication Assets specifically includes the following.

- HVdc OPGW fibre optics connecting
 - Muskrat Falls *Converter Station* to Forteau Point Transition Compound
 - Shoal Cove Transition Compound to Soldiers Pond *Converter Station*
- ADSS fibre optics connecting
 - Forteau Point Transition Compound to the L'Anse au Diable *Electrode*
 - Soldiers Pond *Converter Station* to Dowden's Point *Electrode*
- Fibre optic infrastructure shall also be used to connect
 - Forteau Point Transition Compound to Shoal Cove Transition Compound by optic fibres embedded in each power cable being installed across the SOBI
 - Soldiers Pond *Converter Station* to the NLH Energy Control Centre (ECC) in St. John's
 - Soldiers Pond *Converter Station* to the NLH Backup Control Centre (BCC)
- OTN Layer optical-electronics associated with the above referenced HVdc OPGW fibre optic interconnections.
- Convergence and Access Layers telecommunication systems associated with all of the above referenced fibre optic interconnections, except these telecommunication layers at MF.
- NLH ECC and BCC SCADA system upgrades

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 2

FORM OF ASSIGNMENT

**SCHEDULE 2
FORM OF ASSIGNMENT**

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ASSIGNMENT OF TRANSMISSION FUNDING AGREEMENT

THIS ASSIGNMENT AGREEMENT is made effective the • day of •, 20__.

AMONG:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of Newfoundland and Labrador, by its general partner, Labrador-Island Link General Partner Corporation (the “**Partnership**”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-17 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor (“**NLH**”)

- and -

<@>, a [type of entity and jurisdiction or statute of incorporation or formation], [insert basis on which assignee is permitted] (the “**Assignee**”)

WHEREAS NLH and the Partnership entered into the Interim Transmission Funding Agreement on August 31, 2018_ (the “**Interim TFA**”);

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person, provided however that the NL Crown shall be deemed not to be an affiliate of Nalcor;

“**Agreement**” means this agreement, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“**Applicable Law**” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and

orders of and the terms of all judgments, orders and decrees issued by any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Assignee” means [*] an Affiliate of **[the Partnership] [or a Holder]**, a Qualified Assignee of the Assignor;

“Assigned Rights” means the Interim TFA and the Partnership Rights;

“Assignor” means the Partnership or an Affiliate of the Partnership, as applicable;

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL;

“Consenting Parties” means **[the Partnership, of if applicable as a result of prior assignments, specified Affiliates]** and NLH;

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have correlative meanings);

“Dispute Resolution Procedure” has the meaning set forth in **Section 4.1(a)**;

“Effective Date” means []; **[NTD: Since the Assignee has to be a Qualified Assignee and therefore has to have all of the transmission assets and contracts transferred to it the Effective Date is to be the date when all of those transfers are effective.]**

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Income Tax Act” means the *Income Tax Act* (Canada);

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;
- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the

possession of such Party or released from such attachment within 30 days thereafter;

- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Knowledge” means in the case of a Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“LRA” has the meaning set forth in the recitals;

“NLH” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Nalcor” means Nalcor Energy, a NL corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

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

“Partnership” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Partnership Rights” has the meaning set forth in the Interim TFA;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Qualified Assignee” has the meaning set forth in the Interim TFA;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than a tariff or fees in respect of electricity transmission services) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Interim TFA” has the meaning set forth in the recitals; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 **Construction of Agreement**

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”** or **“Section”** followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is

defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.

- (c) “Including” - The word “**including**”, when used in this Agreement, means “**including without limitation**”.
- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the

determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

ARTICLE 2 ASSIGNMENT

2.1 Assignment to a Qualified Assignee

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Rights and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Rights and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Rights as of the Effective Date and covenants and agrees with the Assignor and the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Rights. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Rights arising on and in respect of matters occurring after the Effective Date.

2.3 Confirmation of Status of Assigned Rights

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Parties are in default of any of their obligations under the Assigned Rights. The Consenting Parties hereby confirm to the Assignee that neither they nor, to their Knowledge, the Assignor are in default of any of their respective obligations under the Assigned Rights.

2.4 Acknowledgement of Consenting Parties

The Consenting Parties acknowledge, consent to and accept the within assignment and assumption of the Assigned Rights subject to the terms and conditions herein, and confirm to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Rights. The Consenting Parties agree that from and after the Effective Date the Assignor shall not have any obligation to the Consenting Parties to observe and perform the conditions and obligations set forth in the Assigned Rights. This **Section 2.4** does not apply if Section 14.1(d) or 14.2(d) of the Interim TFA, as applicable, does not require consent to assignment.

2.5 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.

- (b) HST - Notwithstanding **Section 2.5(a)**, each of the Parties acknowledges and agrees that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and
 - (ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.7**.

2.6 **Determination of Value for Tax Compliance Purposes**

- (a) Subject to the right of final determination as provided under **Section 2.6(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.7 **Invoicing**

All invoices issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

2.8 Payment and Offset

- (a) Subject to **Section 2.8(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.9 HST Registration Status

- (a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.
- (b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1 Assignor and Assignee Representations and Warranties

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to the Consenting Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

- (e) there are [no Legal Proceedings **NTD: or set out Legal Proceedings, if any**] pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and **[NTD: set out any required Regulatory Approvals]**;
- (g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and
- (h) the Assignee is an **[Affiliate][Qualified Assignee]** of the Assignor.

[NTD: Add more detailed representations as to why the Assignee is a Qualified Assignee as well as to the other transactions that need to take place concurrently with this assignment to permit the Assignee to be a Qualified Assignee.]

ARTICLE 4 DISPUTE RESOLUTION PROCEDURE

4.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule 3 to the Interim TFA (the "**Dispute Resolution Procedure**").
- (b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Interim TFA]**

ARTICLE 5 MISCELLANEOUS PROVISIONS

5.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

- (a) To Assignor:

[•]

(b) To Assignee:

[•]

(c) To Consenting Parties:

[•]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and be confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Any Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the Interim TFA.

5.3 Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

5.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

5.5 Announcements

No announcement with respect to this Agreement shall be made by any Party without the prior approval of the other Parties. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with

the other Parties before making any such announcement and gives due consideration to the views of the other Parties with respect thereto. The Parties shall use reasonable efforts to agree on the text of any proposed announcement.

5.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, this Agreement shall not be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of the other Parties for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of the other Parties.

5.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

5.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all Parties.

5.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase

the obligations of the Party giving such consent or approval or otherwise reduce the obligations of a Party receiving such consent or approval.

5.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a Party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure; (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

5.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[ASSIGNOR]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the
[company]/[corporation][the general partner; the
general partner has authority to bind the Assignor].

[ASSIGNEE]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the
[company]/[corporation][the general partner; the
general partner has authority to bind the Assignee].

[CONSENTING PARTY]

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the
[company]/[corporation][the general partner; the
general partner has authority to bind the
Partnership].

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 3

DISPUTE RESOLUTION PROCEDURE

SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE

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**SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE**

Section 1 Interpretation

1.1 Definitions

In this Schedule, the definitions set forth in the Articles of Agreement apply and in addition thereto:

“Agreement” means the agreement to which this Schedule is attached;

“Appointment Date” has the meaning set forth in **Section 6.4**;

“Arbitration Act” means the *Arbitration Act* (Newfoundland and Labrador);

“Arbitration Notice” has the meaning set forth in **Section 5.1(a)(i)**;

“Arbitration Procedure” means the provisions of **Section 5**;

“Arbitrator” means an arbitrator appointed pursuant to the Arbitration Procedure;

“Articles of Agreement” means the main body of the Agreement;

“Chair” means the person elected or appointed to chair the Tribunal;

“Code” means the Commercial Arbitration Code as set out in the *Commercial Arbitration Act* (Canada) as of the Effective Date, a copy of which is attached hereto as **Appendix A**;

“Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party consents to arbitration of the Dispute referred to in the Arbitration Notice;

“Delegate” has the meaning set forth in **Section 6.3(c)**;

“Dispute Context” has the meaning set forth in **Section 6.6**;

“Document” includes a film, photograph, videotape, chart, graph, map, plan, survey, book of account, recording of sound, and information recorded or stored by means of any device;

“Expert Determination Procedure” means the provisions of **Section 6**;

“General Dispute” means a Dispute that is not a Specified Dispute;

“Independent Expert” means the Person appointed as such to conduct an expert determination in accordance with the Expert Determination Procedure;

“Information” means all documents and information, including Confidential Information, disclosed by a Party for the purposes of this Dispute Resolution Procedure;

“Initial Meeting” has the meaning set forth in **Section 6.8**;

“Mediation Notice” has the meaning set forth in **Section 4.1(a)**;

“Mediation Procedure” means the provisions of **Section 4**;

“Mediation Response” has the meaning set forth in **Section 4.1(d)**;

“Mediator” means the mediator appointed pursuant to the Mediation Procedure;

“Negotiation Procedure” means the provisions of **Section 3**;

“Non-Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party does not consent to arbitration of the Dispute referred to in the Arbitration Notice;

“Notified Parties” has the meaning set forth in **Section 5.1(a)(i)**;

“Notifying Party” has the meaning set forth in **Section 5.1(a)(i)**;

“Referral Notice” has the meaning set forth in **Section 6.1**;

“Referring Party” has the meaning set forth in **Section 6.1**;

“Requesting Party” has the meaning set forth in **Section 4.1(a)**;

“Responding Party” has the meaning set forth in **Section 6.1**;

“Response” has the meaning set forth in **Section 6.9(b)**;

“Review Notice” has the meaning set forth in **Section 3.1**;

“Specified Dispute” means a Dispute required by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

“Submission” has the meaning set forth in **Section 6.9(a)**;

“Terms of Reference” has the meaning set forth in **Section 6.4**; and

“Tribunal” means either a single Arbitrator or a panel of Arbitrators, as the case may be, appointed pursuant to the Arbitration Procedure to serve as the arbitrator or arbitrators of a General Dispute.

1.2 Section References

Unless otherwise indicated, all references in this Schedule to a “**Section**” followed by a number and/or a letter refer to the specified Section of this Schedule.

1.3 Appendix

The following Appendix is attached to and incorporated by reference in this Schedule, and is deemed to be part hereof:

Appendix A - Commercial Arbitration Code (Canada)

Section 2 Alternative Dispute Resolution

2.1 Purpose and Sequence of Dispute Resolution

The purpose of this Schedule is to set forth a framework and procedures to resolve any Disputes that may arise under the Agreement in an amicable manner, in private and confidential proceedings, and where possible, without resort to litigation. The Parties agree to exclusively utilize the following process to achieve this goal, which shall be undertaken in the following order:

- (a) first, by referring the Dispute to negotiation pursuant to the Negotiation Procedure; and
- (b) in the case of a General Dispute:
 - (i) second, by way of mediation pursuant to the Mediation Procedure; and
 - (ii) third, either:
 - (A) by arbitration pursuant to the Arbitration Procedure where the Parties agree or are deemed to have agreed to arbitration; or
 - (B) by litigation, where the Parties do not agree and are not deemed to have agreed to arbitration pursuant to the Arbitration Procedure; or
- (c) in the case of a Specified Dispute, second by expert determination in accordance with the Expert Determination Procedure.

2.2 Confidentiality

- (a) Subject to **Section 2.2(b)**, all Information disclosed by a Party pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure shall be treated as confidential by the Parties and any Mediator, Arbitrator or Independent Expert. Neither the disclosure nor production of Information will represent any waiver of privilege by the disclosing

Party. Each Party agrees not to disclose Information provided by the other Party for the purposes hereof to any other Person for any other purpose. Further, such Information shall not be used in any subsequent proceedings without the consent of the Party that disclosed it.

- (b) **Section 2.2(a)** does not prevent a Party from disclosing or using Information not received by it exclusively pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure as and to the extent permitted under the Agreement.

2.3 Interim Measures

Either Party may apply to a court for interim measures to protect its interest during the period that it is attempting to resolve a Dispute prior to the constitution of a Tribunal, including preliminary injunction or other equitable relief concerning that Dispute. The Parties agree that seeking and obtaining any such interim measure will not waive the Parties' obligation to proceed in accordance with **Section 2.1**.

2.4 Mediator or Arbitrator as Witness

The Parties agree that any Mediator or Arbitrator appointed hereunder shall not be compelled as a witness in any proceedings for any purpose whatsoever in relation to the Agreement.

Section 3 Negotiation Procedure

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by any Party requesting a review under this **Section 3** by Notice to the other Parties (a "**Review Notice**"). Each Party shall be afforded a reasonable opportunity to present all relevant Information regarding its position to the other Party's representative. The Parties shall consider the Information provided and seek to resolve the Dispute through negotiation. Negotiations shall be concluded within 15 Business Days from the date of delivery of the Review Notice or within such extended period as may be agreed in writing by the Parties.

3.2 Reservation of Rights

Except to the extent that such negotiations result in a settlement, such negotiations and exchange of Information will be without prejudice and inadmissible against a Party's interest in any subsequent proceedings and no Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

3.3 Failure of Negotiations

If the Parties have not resolved the Dispute to the satisfaction of both Parties within 15 Business Days after delivery of the Review Notice, or within such extended period as may be agreed in writing by the Parties, negotiations will be deemed to have failed to resolve the Dispute and any Party may then request that the matter be referred to non-binding mediation pursuant to the Mediation Procedure.

Section 4 **Mediation Procedure**

4.1 Request for Mediation

- (a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the “**Requesting Party**”), by Notice to the other Party given within five Business Days after expiry of the period set forth in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a “**Mediation Notice**”) containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.
- (b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.
- (c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:
 - (i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;
 - (ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;
 - (iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;
 - (iv) a Party gives Notice to the other Parties that it terminates the mediation;
 - (v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;
 - (vi) **Section 4.3(d)** applies; or
 - (vii) the Dispute is settled as provided in **Section 4.4**.

- (d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the “**Mediation Response**”) to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 Appointment of Mediator

Within 10 Business Days after receipt of the Mediation Response by the Requesting Party, the Parties shall attempt to appoint a Mediator to assist the parties in resolving the Dispute. The appointment shall be in writing and signed by the Parties and the Mediator.

4.3 Mediation Process

- (a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.
- (b) The location of the mediation will be St. John’s, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.
- (c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.
- (d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.
- (e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally (or in such other proportions as they may agree), including the costs of or attributable to the Mediator and the facilities used for the mediation.

4.4 Reservation of Rights

Any mediation undertaken hereunder will be non-binding, and except to the extent a settlement is reached, will be considered without prejudice and inadmissible against a Party’s interest in any subsequent proceedings and no Party will be considered to have waived any

privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

Section 5 Arbitration Procedure

5.1 Submission to Binding Arbitration

- (a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3**:
 - (i) a Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Parties (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, any Party may elect, by giving notice thereof to the other Parties, to proceed with resolution of the General Dispute pursuant to **Section 2.1(b)(ii)(B)**.
- (b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.
- (c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.
- (d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.
- (e) Notwithstanding **Sections 5.1(b), 5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.
- (f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by arbitration pursuant to this **Section 5**. The arbitration will be subject to the Arbitration Act and conducted in accordance with the Code, as supplemented and modified by this **Section 5**.

5.2 Provisions Relating to the Arbitration Act and the Code

- (a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.

- (b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.
- (c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the “arbitration agreement”.
- (d) A reference in the Code to “a court or other authority specified in article 6”, will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.
- (e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.
- (f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.
- (g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.
- (h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.
- (i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 Appointment of Tribunal

- (a) Subject to **Section 5.4**, the arbitration will be heard and determined by three Arbitrators. Each Party shall appoint an Arbitrator of its choice within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration. The Party-appointed Arbitrators shall in turn appoint a third Arbitrator, who shall act as Chair of the Tribunal, within 20 Business Days after the appointment of both Party-appointed Arbitrators. If the Party-appointed Arbitrators cannot reach agreement on a third Arbitrator, or if a Party fails or refuses to appoint its Party-appointed Arbitrator within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration, the appointment of the Chair of the Tribunal and the third Arbitrator will be made in accordance with Article 11 of the Code.
- (b) Except for the appointment of an Arbitrator pursuant to the Code, the appointment of an Arbitrator must be in writing and accepted in writing by the Arbitrator.

5.4 Arbitration by Single Arbitrator

The arbitration will be heard and determined by one Arbitrator where the Parties agree to arbitration by a single Arbitrator and jointly appoint the Arbitrator within 15 Business Days after the Consent to Arbitration is given or deemed to have been given. If the Parties do not agree to arbitration by a single Arbitrator and appoint the Arbitrator within such time, the arbitration will be heard by three Arbitrators appointed pursuant to **Section 5.3**.

5.5 Procedure

- (a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.
- (b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.
- (c) If the Parties initiate multiple arbitration proceedings under the Agreement and any other agreement to which they are all parties, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may, with the written consent of all Parties in all such proceedings, be consolidated into a single arbitration proceeding.
- (d) The Parties may agree as to the manner in which the Tribunal shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing such agreement within 20 Business Days from the date of selection or appointment of the Tribunal, the Tribunal shall promptly and expeditiously conduct the arbitration proceedings in accordance with the Code. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.
- (e) Nothing in this **Section 5** will prevent either Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with the Arbitration Procedure, or to prevent manifestly unfair or unequal treatment of either Party.
- (f) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Schedule or of the Code.

5.6 Awards

- (a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.
- (b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.

- (c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.
- (d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.
- (e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is Paid in Full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 Settlement

If the Parties settle the Dispute before the Tribunal delivers its written award, the arbitration will be terminated and the Tribunal shall record the terms of settlement in the form of an award made on consent of the Parties.

Section 6 Expert Determination Procedure

6.1 Referral for Expert Determination

A Party (the “**Referring Party**”) may by Notice to another Party (the “**Responding Party**”) require referral of a Specified Dispute to an Independent Expert for determination pursuant to this **Section 6** (the “**Referral Notice**”).

6.2 Qualifications of Independent Expert

Any Independent Expert appointed under this **Section 6** shall be:

- (a) independent of each of the Parties;
- (b) of national or international standing;
- (c) well qualified by education, technical training and experience, and hold the appropriate professional qualifications, to determine the matters in issue in the Specified Dispute; and
- (d) impartial and have no interest or obligation in conflict with the task to be performed as an Independent Expert for the Parties. Without limiting the generality of the foregoing, a conflict will be deemed to exist, unless otherwise agreed in writing by the Parties, if the Independent Expert at any time previously performed work in connection with matters covered by the Agreement, or during the preceding three

years performed any other work for either of the Parties or any of their Affiliates. Any direct or beneficial equity interest the Independent Expert has in one or more of the Parties or their Affiliates, or *vice versa*, shall be declared by each Party and the Independent Expert prior to the Independent Expert being retained.

6.3 **Selection of the Independent Expert**

- (a) Within 10 Business Days after delivery of the Referral Notice, each Party shall deliver to the other Party, in a simultaneous exchange, a list of the names of five Persons (ranked 1 - 5 in order of preference, 5 being that Party's first preference) who are acceptable to the Party to act as the Independent Expert. If one Person only is named in both lists, that Person shall be the Independent Expert to determine the Specified Dispute. If more than one Person is named in both lists, the Person with the highest total numerical ranking, determined by adding the rankings from both lists, shall be the Independent Expert to determine the Specified Dispute. In the event of a tie in the rankings, the Person to be the Independent Expert shall be selected by lot from among those of highest equal rank.
- (b) If the Parties fail to select an Independent Expert from the initial lists provided pursuant to **Section 6.3(a)**, the process under **Section 6.3(a)** shall be repeated with a second list of five names from each Party, except that the Parties shall exchange lists within five Business Days after the end of the 10 Business Day period under **Section 6.3(a)**.
- (c) If the Parties fail to select an Independent Expert pursuant to **Section 6.3(a)** or **6.3(b)** or otherwise within 15 Business Days after the Referral Notice is given, within a further period of five Business Days after the end of such 15 day period the Parties shall jointly request the President of ADR Chambers in Toronto, Ontario or his or her designate (the "**Delegate**") to appoint the Independent Expert from a list submitted by the Parties with the request. Each Party may nominate up to three proposed Independent Experts for inclusion on the list. The Parties shall not advise the Delegate which Party nominated a particular nominee. Each Party shall be responsible for one-half of the costs of the Delegate.

6.4 **Terms of Reference**

Once an Independent Expert is selected pursuant to **Section 6.3**, the Parties shall use commercially reasonable efforts to enter into an appropriate engagement agreement with the Independent Expert (the "**Terms of Reference**") as soon as practicable, and in any event within 20 Business Days, after selection of the Independent Expert pursuant to **Section 6.3**. Failure of the Parties and the Independent Expert to agree upon the Terms of Reference will be deemed to be a General Dispute and the Terms of Reference will be resolved by a single Arbitrator pursuant to the Arbitration Procedure. The date of execution of the Terms of Reference by all of the Parties and the Independent Expert is herein called the "**Appointment Date**".

6.5 Information Provided to Independent Expert

For the purpose of the Expert Determination Procedure, the Parties shall provide to the Independent Expert the following within five Business Days after the Appointment Date:

- (a) a copy of the Agreement, including the Schedules;
- (b) copies of or full access to all documents relevant to the Specified Dispute to be determined by the Independent Expert; and
- (c) other data and reports as may be mutually agreed by the Parties.

6.6 Dispute Context

The Independent Expert shall review and analyze, as necessary, the materials provided to it by the Parties pursuant to **Section 6.5**. The Independent Expert shall make its determination pursuant to the Terms of Reference based upon the materials provided by the Parties and in accordance with the Article, Section or Schedule of the Agreement under which the Specified Dispute to be determined arose (the “**Dispute Context**”).

6.7 No ex parte Communication

No communication between the Independent Expert and either of the Parties shall be permitted from the Appointment Date until after delivery of the Independent Expert’s final decision except:

- (a) with the approval of both Parties;
- (b) as provided by this **Section 6**; or
- (c) to address strictly administrative matters.

All communications permitted by this **Section 6.7** between either Party and the Independent Expert shall be conducted in writing, with copies sent simultaneously to the other Party in the same manner.

6.8 Initial Meeting and Joint Presentations by the Parties

Within 10 Business Days after the Appointment Date, the Independent Expert and the Parties shall attend an initial informational meeting (the “**Initial Meeting**”) in St. John’s, Newfoundland and Labrador, or at such other location as may be mutually agreed by the Parties, at a time, date and location as determined by the Independent Expert, at which the Parties shall provide an overview of the Specified Dispute to be determined, review the Expert Determination Procedure, and establish a timetable and deadlines for the Independent Expert’s review, all of which are to be consistent with the Agreement.

6.9 **Written Submissions and Responses**

- (a) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after the Initial Meeting, each Party shall provide to the Independent Expert a written submission (a “**Submission**”) respecting its interpretation and evaluation of the Specified Dispute.
- (b) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after receipt of the other Party’s Submission, each Party shall have the opportunity to provide comments on the other Party’s Submission by written submissions (a “**Response**”) provided to the Independent Expert and the other Party.
- (c) The Parties shall provide any Information deemed necessary by the Independent Expert to complete the evaluation required pursuant to this **Section 6**.
- (d) A Party that fails to submit a Submission or a Response to the Independent Expert within the time allowed by this **Section 6.9** will be deemed to have waived its right to make a Submission or Response, as the case may be.

6.10 **Independent Expert Clarifications**

- (a) Following receipt of the Submissions and Responses, the Independent Expert may, at its discretion, seek any number of clarifications with respect to any aspect of either Party’s Submission or Response. Such requests for clarifications shall be made by the Independent Expert in writing and the clarifications by the Parties shall be made in writing as requested by the Independent Expert, provided that the other Party shall be provided with a copy of such requests and clarifications.
- (b) The purpose of such clarifications will be to allow the Independent Expert to fully understand the technical and/or financial basis and methodologies used in the preparation of the Submission and Response of each Party, it being understood that each Party’s Submission and Response will be the primary basis upon which the Independent Expert shall make its determination.
- (c) All requests for clarifications and all questions in relation thereto will be initiated or posed exclusively by the Independent Expert to the Party from whom clarification is sought as seen fit by the Independent Expert, in its sole discretion, and free of any interruption or interjection by the other Party. Neither Party will have any right to cross-examine the other Party in respect of such Party’s Submission or Response or its responses to the Independent Expert pursuant to this **Section 6.10**.

6.11 **Method of Evaluation**

- (a) The Independent Expert’s assessment shall include the method of evaluation elements set forth in the Dispute Context.

- (b) The Independent Expert's assessment, including its economic model, cash flows and analysis, if any, will be made available to the Parties.

6.12 Decision and Presentation of Report

The Independent Expert shall complete its assessment and deliver a written decision of its determination of the Specified Dispute within 40 Business Days after the Independent Expert's receipt of the Responses.

6.13 Costs of Expert Determination

Each Party shall be responsible for one-half of the costs of the Independent Expert. Each Party shall bear its own costs related to the expert determination.

6.14 Effect of Determination

- (a) The Independent Expert's determination pursuant to this **Section 6** will be final and binding upon the Parties and not reviewable by a court for any reason whatsoever.
- (b) The Independent Expert is not an arbitrator of the Specified Dispute and is deemed not to be acting in an arbitral capacity. The Independent Expert's determination pursuant to this **Section 6** is not an arbitration under the Arbitration Act or any other federal or provincial legislation.

6.15 Settlement

If the Parties settle the Specified Dispute before the Independent Expert delivers its written decision, the Expert Determination Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

INTERIM TRANSMISSION FUNDING AGREEMENT

APPENDIX A

TO

DISPUTE RESOLUTION PROCEDURE

COMMERCIAL ARBITRATION CODE

COMMERCIAL ARBITRATION CODE

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

Note: The word "international", which appears in paragraph (1) of article 1 of the Model Law, has been deleted from paragraph (1) of article 1 below. Paragraphs (3) and (4) of article 1, which contain a description of when arbitration is international, are deleted. Paragraph (5) appears as paragraph (3).

Any additions or substitutions to the Model Law are indicated by the use of italics.

Except as otherwise indicated, the material that follows reproduces exactly the Model Law.

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

- (1) This *Code* applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.
- (2) The provisions of this *Code*, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.
- (3) This *Code* shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this *Code*.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this *Code*:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;
- (d) where a provision of this *Code*, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this *Code* refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this *Code*, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

Note: The word "international", which appears in paragraph (1) of article 1 of the Model Law, has been deleted from paragraph (1) of article 1 below. Paragraphs (3) and (4) of article 1, which contain a description of when arbitration is international, are deleted. Paragraph (5) appears as paragraph (3).

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- (2) The provisions of this *Code*, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.
- (3) This *Code* shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this *Code*.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this *Code*:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;
- (d) where a provision of this *Code*, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this *Code* refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this *Code*, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (c) a party fails to act as required under such procedure, or
 - (d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(e) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12 GROUNDS FOR CHALLENGE

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

ARTICLE 13 CHALLENGE PROCEDURE

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

ARTICLE 15
APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17
POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18
EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

(1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 20
PLACE OF ARBITRATION

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 22
LANGUAGE

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

ARTICLE 25
DEFAULT OF A PARTY

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of *Canada* assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

ARTICLE 29

DECISION-MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

ARTICLE 30

SETTLEMENT

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31

FORM AND CONTENTS OF AWARD

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:
 - (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this *Code* from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

ARTICLE 5
EXTENT OF COURT INTERVENTION

In matters governed by this *Code*, no court shall intervene except where so provided in this *Code*.

ARTICLE 6
COURT OR OTHER AUTHORITY FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE AND SUPERVISION

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by *the Federal Court or any superior, county or district court*.

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(c) a party fails to act as required under such procedure, or

(d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

ARTICLE 32
TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 4

CONFIDENTIAL INFORMATION

SCHEDULE 4
CONFIDENTIAL INFORMATION

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SCHEDULE 4 CONFIDENTIAL INFORMATION

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement:

“Agreement” means the agreement to which this Schedule is attached;

“ATIPPA” means the *Access to Information and Protection of Privacy Act* (Newfoundland and Labrador);

“Authorized Purpose” means a purpose associated with the rights and obligations set forth in the Agreement;

“ECA” means the *Energy Corporation Act* (Newfoundland and Labrador);

“Lender Recipient” has the meaning set forth in **Section 2.3**;

“Representatives” means Affiliates, partners, directors, officers and employees of a Party or any of its Affiliates, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party or any of its Affiliates in any way in connection with the Authorized Purpose;

“Schedule” means this **Schedule 4 - Confidential Information**;

“Trade Secret” means information that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 2 Confidentiality and Restricted Use

2.1 Subject to the terms and conditions of this Schedule, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which shall in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

2.2 The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in **Section 2.3** and **Section 4** of this **Schedule**.

2.3 The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

- (a) be informed by the Receiving Party of the confidential nature of such Confidential Information; and
- (b) unless such Representative or Lender Recipient is already bound by a duty of confidentiality to the Receiving Party that is substantially similar to the obligations under the Agreement, be directed by the Receiving Party, and such Representative or Lender Recipient shall agree in writing, before receipt of such Confidential Information, to be bound by the obligations of, and to treat such Confidential Information in accordance with the terms and conditions of, the Agreement as if it were a Party hereto.

2.4 The Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or, if so requested in writing by the Disclosing Party, destroy and certify such destruction (such certificate to be signed by an officer of the Receiving Party), all Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party or its Representatives relating to the Confidential Information of the Disclosing Party, within thirty days of a written request by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Confidential Information only for administering compliance with the Agreement or if required to retain such information for regulatory purposes, but such copies must be securely maintained and segregated from other records of the Receiving Party.

2.5 The obligations of confidentiality with respect to Confidential Information shall endure and remain in force until the fifth anniversary of the expiry of the Interim TFA Term (the “**Term**”), provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the fifth anniversary of the expiry of the Term for such additional period as such information remains a Trade Secret. The provisions hereof which expressly or by their nature survive termination or expiration shall survive termination or expiration of the Agreement.

2.6 Notwithstanding the foregoing, the obligations set forth herein shall not extend to any information which:

- (a) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this Schedule or other obligation of confidentiality;
- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this Schedule or other obligation of confidentiality;

- (c) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
- (d) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Schedule or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
- (f) is approved in writing in advance for release by the Disclosing Party.

2.7 Each Party agrees that it shall ensure compliance with and be liable for any violation of this Schedule by that Party's Representatives and that it will indemnify and hold harmless the other Party and its Representatives against any losses, costs, damages and claims suffered or incurred by or asserted against such Party or its Representatives flowing from such violation. This indemnity shall survive termination of the Agreement.

2.8 Each Receiving Party agrees that each Disclosing Party may be irreparably damaged by any unauthorized disclosure, communication or use of the Disclosing Party's Confidential Information by the Receiving Party or its Representatives and that monetary damages may not be sufficient to remedy any breach by the Receiving Party or its Representatives of any term or provision of the Agreement and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to any other remedy available at law or in equity.

Section 3 Acknowledgments

The Receiving Party agrees with the Disclosing Party that:

- (a) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

- (d) no licence to the Receiving Party under any copyright, trademark, patent or other intellectual property right is either granted or implied by the conveying of Confidential Information to the Receiving Party.

Section 4 Disclosures Required By Law

4.1 NLH and its Affiliates and the Partnership and its Affiliates are at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including ATIPPA. Each of the Parties acknowledge that the other Parties and their respective Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of the Agreement.

4.2 The Parties hereby acknowledge and agree that the Confidential Information disclosed by another Party is “commercially sensitive information” as defined in the ECA and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to the other Parties, as applicable. It is further acknowledged and agreed that each Party has represented to the other Parties that the Confidential Information disclosed is treated consistently in a confidential manner by each of them and is customarily not provided to their competitors. Therefore, the Parties shall each refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of NL Trial Division, may occur. To the extent permitted by ATIPPA at each step in this process, the Parties, as applicable, will argue against disclosure, support any submission against disclosure, and be entitled to be represented and make arguments in support of non-disclosure.

4.3 If the Receiving Party or any of its Representatives is required by Applicable Law or requested by any Person pursuant to ATIPPA, or by any Authorized Authority under any circumstances, to disclose any Confidential Information, then, subject to Applicable Law, the Receiving Party may only disclose Confidential Information if, to the extent permitted by Applicable Law, it has:

- (a) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
- (b) obtained a written legal opinion that disclosure is required;
- (c) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
- (d) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;

- (e) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
- (f) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

4.4 Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of the Agreement, provided that all relevant obligations under the Agreement, including **Section 4.3**, have been met. For the avoidance of doubt, each Party and its respective Affiliates shall have no liability to the other Parties and their Affiliates for any disclosure of Confidential Information that is lawfully required to be made pursuant to ATIPPA.

4.5 In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (a) any proceeding among the Parties or any of their Affiliates; or
- (b) any proceeding between a Receiving Party and another Person.

In connection with the foregoing, every Receiving Party shall consent to such an order of confidentiality upon request of the relevant Disclosing Party. Any Confidential Information that is required to be disclosed but is subject to an order of confidentiality or similar order shall continue to be Confidential Information subject to protection under this Schedule.

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 5

AMENDING AGREEMENT

SCHEDULE 5

INTERIM TRANSMISSION FUNDING AMENDING AGREEMENT

THIS INTERIM TRANSMISSION FUNDING AMENDING AGREEMENT is made as of the ____ day of _____, 20____ (the "**Amending Agreement**").

BETWEEN:

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP, a limited partnership formed pursuant to the laws of the Province of NL, acting by its general partner, Labrador-Island Link General Partner Corporation (the "**Partnership**");

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor ("**NLH**").

WHEREAS the Parties entered into an Interim Transmission Funding Agreement (the "**Interim TFA**") dated the 31st day of August, 2018;

AND WHEREAS pursuant to the terms of the Interim TFA, the Parties agreed to enter into this Amending Agreement upon satisfaction of certain conditions;

AND WHEREAS the Parties wish to amend the Interim TFA as hereinafter set forth in this Amending Agreement;

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the premises and mutual covenants and agreements hereinafter set forth and contained, the Parties hereto agree as follows:

1. The following definitions shall be added to Section 1.1 of the Interim TFA:

"**Actual Annual Financing Cost Statement**" has the meaning set forth in **Section 3.4(c)**.

"**Interim Financing Invoice**" has the meaning set forth in **Section 3.4(e)**.

"**Monthly Financing Costs**" has the meaning set forth in **Section 3.4(a)**.

"**Quarterly Financing Cost Statement**" has the meaning set forth in **Section 3.4(b)**.

2. **Section 3.4** of the Interim TFA shall be deleted in its entirety and replaced with the following:

- (a) Accrual of Monthly Financing Costs - Interim Financing Costs for the first month, or part thereof, of the Interim TFA Term shall become due and owing by NLH to the Partnership on the Effective Date and thereafter shall be owed monthly during the Interim TFA Term (the “**Monthly Financing Costs**”).
- (b) Calculation of Monthly Financing Costs - Within 15 days after the end of each Quarter or partial Quarter during which Monthly Financing Costs have accrued and become owing by NLH to the Partnership, the Partnership shall deliver to NLH a Notice (the “**Quarterly Financing Cost Statement**”) setting out the actual Monthly Financing Costs owed for the previous Quarter. The Quarterly Financing Cost Statement shall set out the actual monthly financing costs owed for each calendar month (or part thereof) during the quarter.
- (c) Annual Adjustment - Within 60 days after the end of the prior Operating Year, the Partnership shall deliver to NLH a Notice setting out the actual amount of the Interim Financing Costs owed by NLH to the Partnership for the prior Operating Year (the “**Actual Annual Financing Cost Statement**”), addressing in detail and with supporting documentation, any discrepancies from the total sum of Quarterly Financing Cost Statements delivered during such Operating Year. The amount (whether positive or negative) by which the Actual Annual Financing Cost Statement differs from the total sum of the Quarterly Financing Cost Statements delivered for such Operating Year shall be adjusted between the Partnership and NLH such that the Actual Annual Financing Cost Statement becomes payable in accordance with **Section 3.4(e)**.
- (d) Further Adjustments - After the annual adjustment is made pursuant to **Section 3.4(c)**, should a Party discover or obtain written evidence of an error made in the calculation of Interim Financing Costs during a previous Operating Year, such Party shall forthwith provide Notice of such error and the supporting documentation in its possession to the other Party. On verification of the error by the other Party or, if applicable, pursuant to the Dispute Resolution Procedure, the accrual or payment of funds to address such error shall be made by the applicable Party within 10 days, or in accordance with **Section 3.4(e)**.
- (e) Actual Payment of Interim Financing Costs – Payment of Interim Financing Costs by NLH to the Partnership, or such other entity to which the right to receive such payment is assigned pursuant to **Section 14.1(f)** of this Agreement, shall commence upon the effective date of the Existing TFA and shall be paid in equal monthly installments over the Service Life of the LIL. LIL shall not later than 30 days prior to the commencement of each year during the Service Life of the LIL issue to NLH a Notice (the “**Interim Financing Invoice**”) setting out the amount due for the

following year. The Interim Financing Invoice shall set out the monthly payment due for each calendar month (or part thereof) in the applicable year.

3. This Amending Agreement shall be effective from the date hereof and, unless subsequently amended, shall remain in full force and effect from such date.
4. Unless otherwise defined, all capitalized terms and expressions used herein shall have the meaning respectively ascribed thereto in the Interim TFA.
5. This Amending Agreement is supplementary to the Interim TFA and is read with and construed in accordance with the Interim TFA, as the case may be, as if this Amending Agreement and the Interim TFA, as amended, constitute one (1) agreement.
6. In the event of any conflict between the provisions of this Amending Agreement and the Interim TFA, the provisions of this Amending Agreement shall prevail.
7. Except as this Amending Agreement otherwise provides, the Interim TFA is in all respects ratified and confirmed and all terms, provisions and covenants thereof shall remain in full force and effect.
8. This Amending Agreement shall be binding upon and enure to the benefit of each of the parties hereto and their respective successors and assigns.

(Remainder of page intentionally blank. Signature page to follow.)

IN WITNESS WHEREOF the Parties hereto have executed and delivered this Amending Agreement as of the day and year first above written.

**LABRADOR-ISLAND LINK LIMITED
PARTNERSHIP**

Per:

Title:

Per:

Title:

NEWFOUNDLAND AND LABRADOR HYDRO

Per:

Title:

Per:

Title:

Execution Page to an Amending Agreement between Labrador-Island Link Limited Partnership and Newfoundland and Labrador Hydro dated as of the ____ day of _____, 20__.

LABRADOR TRANSMISSION CORPORATION

and

NEWFOUNDLAND AND LABRADOR HYDRO

INTERIM TRANSMISSION FUNDING AGREEMENT

August 31, 2018

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SCHEDULE 1 LTA PROJECT DESCRIPTION

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INTERIM TRANSMISSION FUNDING AGREEMENT

THIS INTERIM TRANSMISSION FUNDING AGREEMENT is signed the 31st day of August, 2018.

AMONG:

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor ("**LTC**")

– and –

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-17 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor ("**NLH**")

WHEREAS:

- A. NLH, in its capacity as the NLSO, Muskrat Falls Corporation ("**MFC**") and LTC entered into a Generator Interconnection Agreement dated November 29, 2013 (the "**GIA**"), pursuant to which, amongst other things, LTC agreed to design, develop, finance, construct, commission, own, operate, maintain and sustain the LTA in exchange for direct cost reimbursement for the LTA by MFC, thereby providing certainty in cost recovery for the purposes of the Financing of the LTA;
- B. NLH and MFC entered into a Power Purchase Agreement dated November 29, 2013 (the "**PPA**"), pursuant to which, amongst other things, NLH agreed to pay to MFC the direct cost reimbursement for the LTA payable by MFC to LTC under the GIA;
- C. cost reimbursement for the LTA which flows from NLH, through MFC, and to LTC under the MPPA and the GIA does not commence until the Commissioning Date;
- D. under Order No. P.U. 3(2018) of the PUB, made as directed by OC2017-380, the PUB approved on an interim basis the pro-forma transmission service agreements, transmission rates and rate methodology, transmission policies and procedures and the code of conduct approved by the PUB for operation of NL transmission systems by the NLSO, which transmission systems include the LTA, and which rates include forecast amounts attributable to 2018 Post LIL/LTA (as defined in PUB filings);
- E. NLH wishes to have the LTA available for transmission service prior to the Commissioning Date to deliver off island power purchases to displace usage of the Holyrood oil-fired plant until the completion of MF Plant Commissioning; and
- F. the Parties have agreed to enter into this Agreement for purposes of setting out the Parties respective rights and obligations related to the payment of the Interim TFA Payments by NLH to LTC.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals, and subject to **Section 1.2(h)**, in the Schedules:

“Actual Annual O&M Payment” has the meaning set forth in **Section 3.3(d)**;

“Actual Quarterly O&M Payment” has the meaning set forth in **Section 3.3(b)**;

“Actual Quarterly O&M Payment Invoice” has the meaning set forth in **Section 3.3(b)**;

“Adequacy” means the ability of an electric system to reliably and safely supply electrical demand and energy requirements at all times in accordance with planning and operating criteria and taking into account scheduled and unscheduled outages of system elements;

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person;

“Agreement” means this agreement, including all Schedules, as it may be modified, amended, supplemented or restated by written agreement among the Parties;

“Annual Maintenance Plan” means an annual maintenance plan for the LTA prepared by or for LTC setting out the O&M Activities to take place in each Operating Year, including required equipment outages and their durations and, where appropriate in accordance with Good Utility Practice, O&M Activities to take place in subsequent Operating Years, and containing such other information as may be determined by LTC;

“Annual O&M Budget” means the annual budget for O&M Activities related to the LTA prepared by or for LTC for an Operating Year based on the Annual Maintenance Plan for such Operating Year and the O&M Budget, and including the type of expenditure, the amount thereof and the schedule for making such expenditure;

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of, and the terms of all judgments, orders and decrees issued by, any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative,

judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Bulk Electric System” means the NL electrical generation resources, transmission lines, interconnections with neighbouring systems and associated equipment, generally operated at voltages of 100 KV or higher. Radial transmission facilities serving only load with one transmission source are generally not included in this definition;

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL;

“CFLCo” means Churchill Falls (Labrador) Corporation, Limited, a corporation incorporated pursuant to the laws of Canada, and includes its successors;

“CFLCo Plant” means the hydroelectric generation facility owned and operated by CFLCo on the Churchill River, in the vicinity of Churchill Falls, NL;

“Capacity” means the capability to provide electrical power, measured and expressed in MW;

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

“Claims” means any and all Losses, claims, actions, causes of action, demands, fees (including all legal and other professional fees and disbursements, court costs and experts’ fees), levies, Taxes, judgments, fines, charges, deficiencies, interest, penalties and amounts paid in settlement, whether arising in equity, at common law, by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind or character;

“Commissioning Date” means the date on which all of the following has occurred:

- (a) the MF Plant Commissioning has been completed;
- (b) the LTA Commissioning has been completed;
- (c) the NLSO has accepted in writing that both the MF Plant Commissioning and the LTA Commissioning have been completed; and
- (d) the Financing Parties have accepted in writing that the LTA Commissioning has been completed and the financing parties with respect to the MF Plant have accepted in writing that the MF Plant Commissioning has been completed.

“Confidential Information” means:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of a Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analysis, tests, specifications, charts, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party or its Affiliates; and
- (b) all summaries, notes, analysis, compilations, studies and other records prepared by the Receiving Party that contains or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in **Section (a)** of this definition;

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have a correlative meaning);

“Development Activities” means all activities and undertakings necessary to design, engineer, procure and construct the LTA in accordance with the LTA Project Description, and to Commission the LTA, including obtaining Regulatory Approvals, environmental and performance testing, demobilization, all related project management services and activities, the products of such activities and undertakings, and the resolution of all Claims and disputes related thereto;

“Direct Claim” has the meaning set forth in **Section 11.3(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of such other Party;

“Dispute” means any dispute, controversy or claim of any kind whatsoever arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Applicable Law that affects this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof;

“Dispute Resolution Procedure” has the meaning set forth in **Section 8.1(a)**;

“Effective Date” means the Mono-Pole Commissioning Date;

“Energy” means electrical energy measured and expressed in MWh;

“Estimated Monthly O&M Payment” has the meaning set forth in **Section 3.2(b)**;

“Estimated O&M Payment” has the meaning set forth in **Section 3.2(b)**;

“Estimated O&M Payment Invoice” has the meaning set forth in **Section 3.2(b)**;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“Financing” means the credit facilities granted or extended to, or invested by way of debt (or the purchase of debt) in, LTC with respect to the LTA, whereby or pursuant to which money, credit or other financial accommodation (including by way of hedging, derivative or swap transactions) has been or may be provided, made available or extended to LTC by any Person by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit and financial accommodation (including by way of hedging, derivative or swap transactions), in each case to finance the Development Activities;

“Financing Documents” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement agreements, and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements, and other documents relating thereto;

“Financing Parties” means all lenders, bondholders and other creditors (including any counterparty to any hedging, derivative or swap transaction) providing any part of a Financing and any guarantor or other provider of credit enhancement for any part of such Financing which is not an Affiliate of Nalcor, and includes all agents, collateral agents and collateral trustees acting on their behalf;

“Force Majeure” means an event, condition or circumstance (each, an **“event”**) beyond the reasonable control and without fault or negligence of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or inadvertent action or failure to act causing material physical damage to, or materially impairing the operation of, or access to the MF Plant, the LIL, the LTA or the NL Transmission System, or any machinery or equipment comprising part of, or used in connection with the MF Plant, the LIL, the LTA or the NL Transmission System;
- (e) a revocation, amendment, failure to renew or other inability to obtain or the revocation, failure to renew or other inability to maintain in force any order, permit, licence, certificate or authorization from any Authorized Authority that is required with respect to the O&M Activities, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the party seeking or holding such order, permit, licence, certificate or authorization;
- (f) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of Energy or Capacity that is required by the NLSO for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices; and
- (g) any event or circumstance affecting an O&M Contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that such O&M Contractor is relieved from the performance of its obligations under a contract affecting a Party;

but none of the following shall be a Force Majeure:

- (h) lack of finances or changes in economic circumstances of a Party;
- (i) if the event relied upon results from a breach of Good Utility Practice by the Party claiming Force Majeure; and
- (j) any delay in the settlement of any Dispute;

“GAAP” means generally accepted accounting principles as defined by the Canadian Institute of Chartered Accountants or its successors, as amended or replaced by international financial reporting standards or as otherwise amended from time to time;

"GIA" has the meaning set forth in the recitals of this Agreement;

"Good Utility Practice" means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, Reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

"HSE" means health, safety and the environment;

"HST" means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

"Holder" means "holder" as defined in the *Muskrat Falls Project Land Use and Expropriation Act* (Newfoundland and Labrador);

"Income Tax Act" means the *Income Tax Act* (Canada);

"Indemnified Party" has the meaning set forth in **Section 11.3(a)**;

"Indemnitor" has the meaning set forth in **Section 11.3(a)**;

"Insolvency Event" means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of

a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

"Interim Financing Costs" means, without duplication, all costs and expenses incurred related to the Financing of the LTA during the Interim TFA Term;

"Interim TFA Payments" has the meaning set forth in **Section 3.1**;

"Interim TFA Term" has the meaning set forth in **Section 9.1**;

“Island Interconnected System” means the bulk energy transmission system on the island portion of NL owned and operated by NLH;

“Knowledge” means in the case of a Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“LIL” means the Labrador-Island Link transmission facilities to be constructed by or on behalf of the Partnership from central Labrador to Soldiers Pond, Newfoundland and Labrador;

“LTA” means the transmission facilities to be constructed by or on behalf of LTC in Labrador including its interconnections with the MF Plant, the CFLCo Plant, the LIL and certain portions of the NL Transmission System in Labrador, as more particularly described in the LTA Project Description;

“LTA Project Description” means the LTA project description set forth in **Schedule 1**;

“LTA Commissioning” means the testing activities required to demonstrate that the LTA is ready for safe and Reliable commercial operation in accordance with the LTA Project Description;

“LTC” means Labrador Transmission Corporation, a corporation incorporated pursuant to the laws of NL and a wholly-owned subsidiary of Nalcor, and includes its successors;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“Losses” means any and all losses (other than losses of Energy normally incurred in the transmission of Energy), damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

“MF Plant” means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be owned and operated by MFC;

“MF Plant Commissioning” means the start-up and testing activities required to demonstrate that all four generation units of the MF Plant are ready for safe and Reliable provision of Energy, Capacity and Ancillary Services in accordance with the MF Project Description (as defined in the GIA);

“MFC” has the meaning set forth in the recitals of this Agreement;

“MPPA” means the Multi-Party Pooling Agreement to be entered into between the NLSO and the owners or operators of transmission facilities comprising the NL Transmission System pursuant to which the NLSO shall exercise operational control of, and provide transmission service over, the NL Transmission System;

"MW" means megawatt;

"MWh" means MW hour;

"Mono-Pole Commissioning" means the successful completion of trial operation of a single pole of the LIL for a period of not less than 20 days, during which all equipment and facilities operate without interruption at power transfer levels agreed to by the Parties and the NLSO;

"Mono-Pole Commissioning Date" means the date on which all of the following has occurred:

- (a) the Mono-Pole Commissioning has been completed;
- (b) the NLSO has accepted in writing that the Mono-Pole Commissioning has been completed; and
- (c) the Partnership has provided notice in writing to the NLSO that the LIL facility rating for the purposes of commercial operation under the MPPA is no less than the power transfer level agreed to by the Parties;

"NL" means the Province of Newfoundland and Labrador;

"NL Crown" means Her Majesty in Right of NL;

"NL Transmission System" means electricity transmission assets in NL with a voltage level greater than or equal to 230 KV to be pooled under the MPPA;

"NLH" has the meaning set forth in the preamble to this Agreement, one of the Parties, and includes its successors and permitted assigns;

"NLH Default" has the meaning set forth in **Section 10.3**;

"NLH Indemnified Party" has the meaning set forth in **Section 11.1(a)**;

"NLSO" means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the system operations department of NLH responsible for the safe and reliable operation of the Bulk Electric System or a functionally separate division of NLH performing this function, and includes any of its successors;

"Nalcor" means Nalcor Energy, a corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

"New Taxes" means:

- (a) any Tax exigible pursuant to Applicable Law which comes into force after the Effective Date; and

- (b) any change to a Tax exigible pursuant to Applicable Law which comes into force after the Effective Date;

"Notice" means a communication required or contemplated to be given by a Party to another Party under this Agreement, which communication shall be given in accordance with **Section 16.1**;

"O&M Activities" means all activities and undertakings performed by or on behalf of LTC during the Interim TFA Term that are required to operate, maintain and sustain the LTA in accordance with Good Utility Practice, including administration and the replacement or overhaul of major components;

"O&M Budget" means the budget prepared by or on behalf of LTC for the LTA setting forth the Operation and Maintenance Costs required to be made for each Operating Year during the Interim TFA Term, including the type of expenditure, the amount thereof and the schedule for making such expenditure;

"O&M Contract" means a contract to perform work or provide services, equipment, materials, facilities or supplies forming part of or procured in connection with O&M Activities;

"O&M Contractor" means a Person who enters into an O&M Contract;

"Operation and Maintenance Costs" means, without duplication, all costs and expenses incurred for operation and maintenance of the LTA during the Interim TFA Term, including costs of O&M Activities, including administration costs, any Taxes payable by or on behalf of LTC or in respect of amounts payable to LTC (including for greater certainty, any Taxes payable by LTC and required to be withheld by a Person on the payment of an amount to LTC), net of any such Taxes which are recovered, but grossed up and adjusted to the extent necessary so that the amount of any amounts payable to LTC which are retained by LTC, net of any such Taxes, shall equal the amount which LTC would have retained if such Taxes were not payable by or on behalf of LTC or in respect of amounts payable to LTC, any costs and expenditures related to insurance, including any deductibles, any amount payable on account of a penalty imposed by Applicable Law or contract, any amount payable on account of a judgment rendered against LTC;

"Operating Year" means (a) a calendar year during the Interim TFA Term, except that the first operating year will commence on the Effective Date and end on December 31 of the calendar year in which such date occurs, and the last operating year will end on the date of termination or expiry of the Interim TFA Term, or (b) such other 12 month period as may be mutually agreed to in writing by the Parties;

"PPA" has the meaning set forth in the recitals of this Agreement;

"PUB" means the Board of Commissioners of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador) and any successor;

"Paid in Full" means in relation to any indebtedness that is or may become owing to any Person, the permanent, indefeasible and irrevocable payment to such Person in full of such indebtedness in accordance with the express provisions of the agreements creating or evidencing such indebtedness, without regard to any compromise, reduction or disallowance of all or any item or part thereof by virtue of the application of any laws relating to Insolvency Events or fraudulent conveyance or any similar laws affecting creditors' rights generally or general principles of equity and, if applicable, the cancellation or expiry of any commitment or obligation of such Person to lend or otherwise extend credit or pay any indebtedness;

"Parties" means LTC and NLH, and **"Party"** means one of them;

"Partnership" means the Labrador Island Link Limited Partnership;

"LTC Affiliate Assignee" means an Affiliate of LTC to which all of the LTC Rights are assigned in accordance with the provisions of this Agreement;

"LTC Default" has the meaning set forth in **Section 10.1**;

"LTC Indemnified Party" has the meaning set forth in **Section 11.2(a)**;

"LTC Rights" has the meaning set forth in **Section 14.1(a)**;

"Permits" means permits, licences, Regulatory Approvals and permissions held by LTC in connection with Development Activities or otherwise held by LTC or an Affiliate of LTC in connection with an activity or undertaking involving the LTA or any part of it;

"Person" includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

"Prime Rate" means the variable rate of interest per annum expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by The Bank of Nova Scotia, or any successor thereto, as its reference rate for the determination of interest rates that it will charge on commercial loans in Canadian dollars made in Canada;

"Qualified Assignee" means a Person which is:

- (a) an administrative or security agent of a Financing Party;
- (b) with respect to the LTC Rights, an Affiliate or Affiliates of LTC, or a Holder, provided
 - (i) LTC and such Affiliate(s) or LTC and such Holder, as applicable, enter into an agreement with NLH substantially in the form of **Schedule 2**; and

- (ii) there is a concurrent assignment to such Affiliate(s) or such Holder of the MPPA, this Agreement and all of LTC's right, title and interest in the LTC Rights;

"Quarter" means a calendar quarter (or portion thereof, as applicable) in an Operating Year;

"Receiving Party" means a Party or an Affiliate of a Party that receives Confidential Information from another Party or an Affiliate of another Party;

"Recipient Party" has the meaning set forth in **Section 8.2(a)**;

"Regular Business Hours" means 8:30 a.m. through 4:30 p.m. local time on a Business Day;

"Regulatory Approval" means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

"Reliability" means the degree of performance of the electric power system that results in electricity being delivered in compliance with Reliability Standards and in the amount desired, taking into consideration Adequacy and Security;

"Reliability Standards" means the criteria, standards and requirements relating to Reliability established or authorized by a Standards Authority;

"Representatives" means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party;

"Service Life of the LTA" means the period of time immediately following the LTA Commissioning, as designated by an Authorized Authority, from time to time, during which the LTA can continue to transmit Energy and Capacity in accordance with Reliability Standards and the LTA Project Description, but, in the event that no such designation has been made by the time at which amounts become due and payable under this Agreement, shall be assumed to be 50 years and shall be adjusted accordingly once determined;

"Security" means the ability of an electrical system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

"Standards Authority" means the Government of NL, the PUB, or any other NL agency which assumes or is granted authority over the Parties regarding standards or criteria applicable to the Parties relating to the Reliability of the LTA;

"Tariff Charges" means any charges arising pursuant to a tariff or other schedule of fees or rates set by the PUB in respect of electricity transmission services;

"Tax" or **"Taxes"** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or

measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Third Party Claim” has the meaning set forth in **Section 11.3(b)**; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) Including - The word **“including”**, when used in this Agreement, means **“including without limitation”**.
- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with GAAP, unless expressly stated otherwise.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and

literature of the electricity industry in Canada as of the Effective Date, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.

- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning set forth only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be **“approved”**, **“decided”** or **“determined”** by a Party or requires a Party’s or its Representative’s **“consent”**, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by a Party for resolution pursuant to the Dispute Resolution Procedure.

- (n) References to Other Agreements - Any reference in this Agreement to another agreement shall be deemed to be a reference to such agreement and all amendments made thereto in accordance with the provisions of such agreement (including changes to section numbers referenced herein) as of the Effective Date. Where a term used in this Agreement is defined by reference to the definition contained in another agreement, the definition used in this Agreement shall be as such is defined in the applicable agreement as of the Effective Date.

1.3 Conflicts between Parts of Agreement

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any document delivered pursuant to this Agreement, the provision of the body of this Agreement shall prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 8**, each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Effectiveness of Agreement

Notwithstanding the execution of this Agreement by the Parties, the provisions of this Agreement shall only become effective on the Effective Date.

1.6 Schedules

The following are the Schedules attached to and incorporated by reference in this Agreement, which are deemed to be part hereof:

Schedule 1 – LTA Project Description

Schedule 2 – Form of Assignment

Schedule 3 – Dispute Resolution Procedure

Schedule 4 – Confidential Information

Schedule 5 – Amending Agreement

ARTICLE 2 PURPOSE

2.1 Purpose

The purpose of this Agreement is to establish a mechanism by which NLH shall pay to LTC the Interim TFA Payments as consideration for LTC's commitment to complete LTA Commissioning, operate, maintain and make available for commercial operations the LTA during the Interim TFA Term in accordance with the provisions of this Agreement, and the MPPA.

ARTICLE 3 INTERIM TFA PAYMENTS

3.1 NLH Obligation to Make Interim TFA Payments

NLH agrees, as of and from the Effective Date and at all times thereafter during the Interim TFA Term, to pay to LTC in accordance with the provisions of this Agreement (a) Operation and Maintenance Costs, and (b) subject to **Section 3.4(a)**, Interim Financing Costs (collectively the “**Interim TFA Payments**”). For greater certainty, the Parties agree that there shall be no duplication of amounts paid to LTC by NLH under this Agreement and the amounts paid to LTC by NLH via MFC under the PPA and the GIA, or under Tariff Charges approved by the PUB. In the event that Financing Costs are payable under both this Agreement and the GIA via the PPA, such amounts shall be paid in accordance with the provisions of the GIA and the PPA and shall be deducted from the amounts payable under this Agreement.

3.2 Interim TFA Payments Information

- (a) LTC shall:
 - (i) not later than the Effective Date deliver to NLH the O&M Budget;
 - (ii) not later than 60 days prior to the commencement of an Operating Year deliver to NLH the Annual O&M Budget, which Annual O&M Budget shall remain subject to approval by the Board of Directors of LTC;
 - (iii) within 30 days of receipt of any information which would increase or decrease the Annual O&M Budget by \$1,000,000 or more, deliver to NLH a revised Annual O&M Budget; and
 - (iv) deliver the budget information as set forth in this **Section 3.2(a)** in sufficient detail for NLH to plan for cost recovery.
- (b) O&M Payments – LTC shall, not later than the Effective Date (and thereafter not later than 60 days prior to the commencement of each Operating Year), deliver to NLH a Notice (the “**Estimated O&M Payment Invoice**”) setting out LTC’s estimate of the Operation and Maintenance Costs payable to LTC, in each case, for the following Operating Year (the “**Estimated O&M Payment**”). The Estimated O&M Payment

Invoice shall set out the monthly payment due for each calendar month (or part thereof) in the applicable Operating Year (the “**Estimated Monthly O&M Payment**”).

3.3 Payment of Operation and Maintenance Costs

- (a) Estimated O&M Payment – NLH shall pay to LTC on the first Business Day of each and every calendar month during the Interim TFA Term, the Estimated Monthly O&M Payment for the preceding month.
- (b) Actual TFA Payment - Within 15 days after the end of each Quarter or partial Quarter during which Estimated Monthly O&M Payments have been paid by NLH to LTC, LTC shall deliver to NLH a Notice (the “**Actual Quarterly O&M Payment Invoice**”) setting out the actual Operation and Maintenance Costs payable for the previous Quarter (the “**Actual Quarterly O&M Payment**”). The Actual Quarterly O&M Payment Invoice shall contain a summary of the Operation and Maintenance Costs incurred during the applicable Quarter, and such other detail and supporting documentation as reasonably required by NLH to review the calculation of the Actual Quarterly O&M Payment.
- (c) Quarterly Adjustment - Should the Actual Quarterly O&M Payment exceed the sum of the Estimated Monthly O&M Payments paid during the applicable Quarter, NLH shall pay to LTC within 10 days of receipt by NLH of the Actual Quarterly O&M Payment Invoice the amount by which the Actual Quarterly O&M Payments exceed the sum of the Estimated Monthly O&M Payments paid for the applicable Quarter. Should the Actual Quarterly O&M Payments be less than the sum of the Estimated Monthly O&M Payments paid by NLH for the applicable Quarter, LTC shall within 10 days of delivery by LTC of the Actual Quarterly O&M Invoice, at NLH’s election, either: (i) pay to NLH the amount by which the sum of the Estimated Monthly O&M Payments paid for the applicable Quarter exceeds the Actual Quarterly O&M Payments; or, (ii) deliver to NLH a Notice authorizing NLH to credit against future Estimated Monthly O&M Payments, the amount by which the sum of the Estimated Monthly O&M Payments paid for the applicable Quarter exceeds the Actual Quarterly O&M Payment.
- (d) Annual Adjustment - Within 30 days after the end of the prior Operating Year, LTC shall deliver to NLH a Notice setting out the actual amount of the Operation and Maintenance Costs which was required to be paid by NLH to LTC for the prior Operating Year (“**Actual Annual O&M Payment**”), addressing in detail and with supporting documentation, any discrepancies from the total sum of Actual Quarterly O&M Payments paid by NLH over such Operating Year. The amount (whether positive or negative) by which the Actual Annual O&M Payment differs from the total sum of the Actual Quarterly O&M Payments paid for such Operating Year shall be adjusted between LTC and NLH such that, if the Actual Annual O&M Payment is more than the total sum of the Actual Quarterly O&M Payments paid for the Operating Year, NLH shall within 10 days of delivery by LTC of the applicable Notice

pay the difference to LTC, and if the Actual Annual O&M Payment is less than the total sum of the Actual Quarterly O&M Payments paid for the Operating Year, LTC shall within 10 days of delivery by LTC of the applicable Notice, at NLH's election, either: (i) pay the difference to NLH; or, (ii) deliver to NLH a Notice authorizing NLH to credit the difference against future Estimated Monthly O&M Payments.

- (e) Further Adjustments - After the annual adjustment is made pursuant to **Section 3.3(d)**, should a Party discover or obtain written evidence of an overpayment or an underpayment of Interim TFA Payments for a previous Operating Year, such Party shall forthwith provide Notice of the overpayment or underpayment and the supporting documentation in its possession to the other Party. On verification of the overpayment or underpayment by the other Party or, if applicable, pursuant to the Dispute Resolution Procedure, the payment of funds to address such overpayment or underpayment shall be made by the applicable Party within 10 days.

3.4 Interim Financing Costs

- (a) The Parties agree that accrual of the Interim Financing Costs owed by NLH to LTC shall be conditional upon NLH obtaining the approval of the PUB to establish a deferral account whereby the Interim Financing Costs are deferred for recovery from NLH's customers, which recovery shall commence not sooner than the Commissioning Date.
- (b) The Parties further agree that, upon fulfillment of the condition outlined in **Section 3.4(a)**, the Parties shall enter into an Amending Agreement substantially in the form set out in **Schedule 5** attached hereto.

3.5 Changes to Timing of Payment

The Parties agree to exchange information and, if necessary, to adjust the timing of payment of Interim TFA Payments as provided for in this Agreement to enable the timing of such payments to align as closely as is reasonably possible to the timing of payments required under the Financing Documents.

3.6 Interest on Overdue Amounts

- (a) NLH - If NLH fails to pay on the due date any amount payable to LTC pursuant to this Agreement, including the adjustment provisions set forth in **Sections 3.3 and 3.4**, NLH shall pay interest to LTC on such unpaid amount from the due date or, as the case may be, the date of demand to the date of actual payment (after as well as before judgment) at a rate equal to the default rate of interest set forth in the Financing Documents.
- (b) LTC - If LTC fails to pay on the due date any refund amount payable to NLH pursuant to the adjustment provisions set forth in **Section 3.3**, LTC shall pay interest to NLH on such unpaid amount from the due date or, as the case may be, the date of

demand to the date of actual payment (after as well as before judgment) at a rate equal to NLH's last approved Weighted Average Cost of Capital (WACC).

3.7 Notice to the NLSO

- (a) Forthwith on receiving any payments from NLH pursuant to the provisions of this Agreement, LTC shall provide written notice of receipt to the NLSO in order for the NLSO to account for such payments through credits against NLH's payment obligations arising under any transmission service agreements to which NLH may be a party.
- (b) No later than the Effective Date, LTC shall provide an assignment notice to the NLSO in accordance with Section 6.5(c) of the MPPA.

**ARTICLE 4
OTHER OBLIGATIONS**

4.1 General Covenants of LTC

As of and from the Effective Date, LTC covenants and agrees to:

- (a) provide adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations under this Agreement, including professional engineers and procurement, project management and operating and maintenance personnel; and
- (b) obtain and maintain in good standing all Regulatory Approvals required for the O&M Activities.

4.2 Operations and Maintenance Covenants

As of and from the Effective Date, LTC covenants and agrees to keep the LTA in a good and reasonable state of repair consistent with Good Utility Practice and to that end, LTC shall:

- (a) perform, or cause to be performed, all O&M Activities in accordance with this Agreement;
- (b) prepare the Annual Maintenance Plan in consultation with NLH;
- (c) ensure that all O&M Activities are conducted pursuant to the Annual Maintenance Plan, with only those variations as are necessary and appropriate for the operation and maintenance of the LTA in accordance with Good Utility Practice;
- (d) in the conduct of all O&M Activities:
 - (i) apply methods and practices customarily applied by experienced utility operators in other similar circumstances;

- (ii) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;
- (iii) comply with all regulatory requirements of all Authorized Authorities; and
- (iv) comply with Good Utility Practice;
- (e) comply with all Applicable Law (including rules governing the operation of the NL Transmission System to the extent applicable), Reliability Standards, as required by all Authorized Authorities in NL, and relevant Regulatory Approvals;
- (f) comply with all operating and maintenance requirements applicable to the LTA under the MPPA;
- (g) prepare the O&M Budget and an Annual O&M Budget in consultation with NLH;
- (h) not do or suffer any waste or damage to the LTA (other than reasonable wear and tear), nor permit operation of the LTA outside the design parameters of the LTA;
- (i) enter or cause to be entered into O&M Contracts as are reasonably necessary to carry out the O&M Activities; and
- (j) perform or cause to be performed the O&M Activities in a manner that is in compliance with all Applicable Law pertaining to HSE and that is designed to avoid material adverse impacts on the safety or health of people, property and the environment.

4.3 Ancillary Agreements

LTC shall perform its obligations under:

- (a) the GIA;
- (b) the Transmission Asset Interconnection Agreement (LIL-LTA at Muskrat Falls) between the Partnership, Opco and LTC; and
- (c) the MPPA.

ARTICLE 5 INFORMATION, ACCESS AND REPORTING

5.1 Records and Audits

Each Party shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Interim TFA Term

shall be maintained for the Interim TFA Term; all other documents shall be retained for the longer of (a) any period prescribed by Applicable Law, and (b) at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Parties reasonable access to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Parties to comply with their respective obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Each Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for in this Agreement. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

5.2 Access to the LTA

Each Party shall have the right, from the Effective Date through to the date which is one year after end of the Interim TFA Term, upon reasonable advance Notice to the other Parties, to access the LTA for the sole purpose of examining the LTA or the conduct of the O&M Activities in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the LTA and shall not compromise the safety of persons or property. While accessing the LTA, the Parties and their Representatives shall follow all rules and procedures established for visitors to the site which are related, but not limited, to safety and security. The inspection of the LTA or the exercise of any audit rights or the failure to inspect the LTA or to exercise audit rights by or on behalf of a Party shall not relieve another Party of any of its obligations under this Agreement. No LTC Default or NLH Default will be waived or deemed to have been waived solely by any inspection by or on behalf of a Party. In no event will any inspection by a Party hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

5.3 Communications with Authorized Authorities

Each Party, with respect to the LTA, shall, upon request by another Party, provide such other Party with copies of all communications and correspondence to and from Authorized Authorities.

ARTICLE 6 RESERVATION

6.1 Control of LTA

The Parties hereby agree and acknowledge that NLH's agreement to directly pay LTC the Interim TFA Payments under this Agreement does not grant NLH any control over the operation of the LTA or any right to receive transmission service offered over the LTA by virtue of this Agreement. Notwithstanding the foregoing, the Parties acknowledge that the LTA shall be integrated into the NL Transmission System and NLH shall acquire any transmission service rights over the LTA through the execution of transmission service agreements with the NLSO.

ARTICLE 7
TAXES

7.1 **Supplies and Payments Exclusive of Taxes**

- (a) Payment of Taxes - Except as otherwise provided, each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 7.1(c)**,
 - (i) if LTC is required by Applicable Law to remit or pay Taxes which are NLH's responsibility hereunder, LTC shall first offset the amount of Taxes so recoverable from other amounts owing by it to NLH under this Agreement, and NLH shall promptly reimburse LTC for such Taxes to the extent not so offset;
 - (ii) if NLH is required by Applicable Law to remit or pay Taxes which are LTC's responsibility hereunder, NLH shall first offset the amount of Taxes so recoverable from other amounts owing by it to LTC under this Agreement, and LTC shall promptly reimburse NLH for such Taxes to the extent not so offset; and
 - (iii) nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.
- (c) HST - Notwithstanding **Sections 7.1(a)** and **7.1(b)**, the Parties acknowledge and agree that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to another Party, such amount shall first be increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;

- (iii) if one Party is required to collect Taxes from another Party pursuant to this Agreement, it shall forthwith provide to that other Party such documentation required pursuant to **Section 7.3**; and
 - (iv) if one Party incurs an expense as agent for another Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by such other Party to claim, and shall cooperate with such other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 7.1(b)** and **7.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) NLH is solely responsible for the payment of income taxes and HST payable by NLH; and
 - (ii) LTC is solely responsible for the payment of income taxes and HST payable by LTC.

7.2 **Determination of Value for Tax Compliance Purposes**

- (a) Subject to the right of final determination as provided under **Section 7.2(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

7.3 **Invoicing Tax Requirement**

All invoices, as applicable, issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;

- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

7.4 Payment and Offset

- (a) Subject to **Section 7.4(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

7.5 HST Registration Status and Residency

- (a) NLH represents and warrants that it is registered for purposes of the HST and that its registration number is 1213 94928 RT0001, and undertakes to advise LTC of any change in its HST registration status or number.
- (b) LTC represents and warrants that it is registered for purposes of the HST and that its registration number is 83945 8973 RT0001, and undertakes to advise NLH of any change in its HST registration status or number.
- (c) NLH represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise LTC of any change in its residency status.
- (d) LTC represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise NLH of any change in its residency status.

7.6 Cooperation to Minimize Taxes

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Law, so long as a Party is not materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Law in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).

7.7 Additional Tax Disclosure

Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide to the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:

- (a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
- (b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and
- (c) any other fact or circumstance within the knowledge of a Party which the other Party advises the first Party, in writing, is relevant to a determination by such other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

In addition to the notification required under this **Section 7.7**, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Sections 7.7(a)** through **7.7(c)**.

7.8 Prohibited Tax Disclosure

Except as required by Applicable Law, notwithstanding any other provision of this Agreement, each Party shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of the other Party to an Authorized Authority without the prior written consent of such other Party.

7.9 Withholding Tax

If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Laws, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, a Party shall deliver to such other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of such other Party.

7.10 **Tax Indemnity**

Each Party (in this **Section 7.10** referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 7** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 7.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

- (a) any and all Taxes imposed by any Authorized Authority on the other Party in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the First Party to pay any and all Taxes imposed as stated herein; and
- (b) any and all Taxes imposed by any Authorized Authority in respect of the supplies contemplated by this Agreement, and any and all Claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the First Party to pay any and all Taxes imposed as stated herein.

7.11 **Additional Tax Indemnity**

If one Party (in this **Section 7.11** referred to as the “**First Party**”) is, at any time, a non-resident of Canada for the purposes of the Income Tax Act or the Applicable Law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this **Section 7.11** referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:

- (a) any such amount payable by such other Party pursuant to this **Section 7.11** shall be reduced by the amount of such Taxes, if any, which such other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
- (b) for greater certainty, this **Section 7.11** shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by such other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on such other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

7.12 Assignment

Notwithstanding any other provision in this Agreement and only to the extent an assignment has been authorized in accordance with this Agreement, a Party shall not assign any of its interest in this Agreement to another Person unless:

- (a) the Person is registered for HST purposes and provides the other Parties with its HST registration number in writing prior to such Assignment;
- (b) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Parties of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Section 7.12** and **Article 14**.

**ARTICLE 8
DISPUTE RESOLUTION**

8.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 3** (the “**Dispute Resolution Procedure**”).
- (b) Disputed Payment - Notwithstanding any other provision of this Agreement, if the amount or timing of any payment is disputed by a Party, the Party liable to pay shall make the payment in full on the date such payment is required, prior to initiating any Dispute Resolution Procedure relating thereto. The Parties further agree that any payment to be received by it from another Party as a result of a Dispute Resolution Procedure shall be unsecured and fully subordinated in all respects to all amounts owed to the Financing Parties pursuant to the Financing Documents.
- (c) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 8**, without prejudice to their rights pursuant to this Agreement.
- (d) Directions under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

8.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the “**Claiming Party**”) intending to assert a Claim against the other Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly give the Recipient Party Notice shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure of the Claiming Party to promptly give Notice.
- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 9 TERM AND TERMINATION

9.1 Interim TFA Term

The term of this Agreement (the “**Interim TFA Term**”) shall commence on the Effective Date and shall terminate in accordance with **Section 9.2**. For greater certainty, the Parties hereby acknowledge and agree that NLH shall have no obligation to make any payment of any amount under this Agreement until the Effective Date.

9.2 Termination

This Agreement shall terminate on the first to occur of:

- (a) the Commissioning Date; and
- (b) the date set forth in a written agreement of the Parties to terminate.

9.3 Effect of Termination

- (a) Obligations on Termination - When this Agreement terminates:

- (i) each Party shall promptly return to the other Parties, as applicable, all Confidential Information of the other Parties in the possession of such Party, and destroy any internal documents that contain any Confidential Information of the other Parties (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law which shall continue to be held in accordance with the provisions of **Section 13.1**); and
 - (ii) a Party shall not have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 9.3**.
- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
 - (i) payment of the Interim Financing Costs, as set out in **Section 3.4**;
 - (ii) the final settlement of all accounts between the Parties, including, without limitation, any payments required to be made by a Party pursuant to **Article 3** after the date of termination;
 - (iii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;
 - (iv) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement;
 - (v) information and access as set forth in **Sections 5.1** and **5.2**; and
 - (vi) any other obligations that survive pursuant to **Section 16.13**.

ARTICLE 10

DEFAULT AND REMEDIES

10.1 **LTC Events of Default**

The occurrence of one or more of the following events shall constitute a default by LTC under this Agreement (a “**LTC Default**”):

- (a) LTC fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement which failure is not cured within five days after the receipt of Notice from NLH that such amount is due and owing;
- (b) LTC is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.1(a)** and **10.1(f)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by LTC of Notice thereof from NLH, unless the cure reasonably requires a longer

period of time and LTC is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by NLH;

- (c) any representation or warranty made by LTC in this Agreement is false or misleading in any material respect;
- (d) LTC ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets;
- (e) any Insolvency Event occurs with respect to LTC; or
- (f) LTC is in default or in breach of any term, condition or obligation under the Financing Documents, which results in a payment obligation by LTC arising from an indemnity obligation set forth in the Financing Documents.

10.2 NLH Remedies upon a LTC Default

- (a) General - Upon the occurrence of a LTC Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) NLH shall be entitled to exercise all or any of their respective rights, remedies or recourse available to them under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to NLH are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to this **Section 10.2** and **Article 12**, NLH may recover all Losses suffered by it that result from a LTC Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by NLH to recover any amounts owed to it by LTC under this Agreement.

10.3 NLH Events of Default

The occurrence of one or more of the following events shall constitute a default by NLH under this Agreement (a “**NLH Default**”):

- (a) NLH fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within five days after the receipt of Notice from LTC that such amount is due and owing;

- (b) NLH is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NLH of Notice thereof from LTC, unless the cure reasonably requires a longer period of time and NLH is diligently pursuing the cure, and it is cured within such longer period of time as is agreed LTC;
- (c) any representation or warranty made by NLH in this Agreement is false or misleading in any material respect;
- (d) NLH ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; or
- (e) any Insolvency Event occurs with respect to NLH.

10.4 **LTC Remedies upon a NLH Default**

- (a) General - Upon the occurrence of a NLH Default and at any time thereafter, provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) LTC shall be entitled to exercise all or any of its respective rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to LTC are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to this **Section 10.4** and **Article 12**, LTC may recover all Losses suffered by it that result from a NLH Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by LTC to recover any amounts owed to it by NLH under this Agreement.

10.5 **Equitable Relief**

Nothing in this **Article 10** will limit or prevent a Party from seeking equitable relief, including specific performance or a declaration to enforce the other Party's obligations under this Agreement.

10.6 **Force Majeure**

Other than an obligation to pay or spend money including **Section 3.1**, in the event that a Party is delayed, hindered or prevented from the performance of any act required by this

Agreement by reason of Force Majeure, then performance of such act shall be postponed for a period of time equivalent to the time lost by reason of such Force Majeure.

ARTICLE 11 LIABILITY AND INDEMNITY

11.1 NLH Indemnity

- (a) NLH shall indemnify, defend, reimburse, release and save harmless LTC and its Representatives, and each of their successors and permitted assigns (each such Person, a “**NLH Indemnified Party**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims (including those that may be brought against any NLH Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:
 - (i) any inaccuracy or breach of any representation or warranty made by NLH in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of NLH in this Agreement or any document or instrument delivered pursuant to this Agreement;
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of NLH occurring in connection with, incidental to or resulting from NLH's obligations under this Agreement or any document or instrument delivered pursuant to this Agreement;
 - (iv) any failure by NLH to duly and punctually pay in full all amounts claimed under any invoice as and when provided under **Section 3.3** or any other amounts payable by NLH under the terms hereof; or
 - (v) any loss of any right of any NLH Indemnified Party against NLH in respect of any amounts payable by NLH hereunder for any reason whatsoever, including by operation of any bankruptcy, insolvency or similar such laws, any laws affecting creditors' rights generally or general principles of equity.
- (b) Notwithstanding the foregoing, NLH shall have no obligation to indemnify, defend, reimburse, release or save harmless any NLH Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such NLH Indemnified Party.

11.2 LTC Indemnity

- (a) LTC shall indemnify, defend, reimburse, release and save harmless NLH, its Representatives, and each of their successors and permitted assigns (each such Person, a “**LTC Indemnified Party**”) from and against, and as a separate and

independent covenant agrees to be liable for, all Claims (including those that may be brought against any LTC Indemnified Party by or in favour of a third party) based upon, in connection with, relating to or arising out of:

- (i) any inaccuracy or breach of any representation or warranty made by LTC in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
 - (ii) any breach or failure to perform or comply with any agreement, covenant or obligation of LTC in this Agreement or any document or instrument delivered pursuant to this Agreement; or
 - (iii) any gross negligence, wilful misconduct or fraud by or on behalf of LTC occurring in connection with, incidental to or resulting from LTC's obligations under this Agreement or any document or instrument delivered pursuant to this Agreement.
- (b) Notwithstanding the foregoing, LTC shall have no obligation to indemnify, defend, reimburse, release or save harmless any LTC Indemnified Party in respect of, or to be liable for, Claims to the proportionate extent that such Claims result from the gross negligence, wilful misconduct or fraud of any such LTC Indemnified Party.

11.3 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Sections 11.1 and 11.2**, as applicable, (each, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 11.3**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. Such Notice shall specify whether the Claim arises as a result of a Claim by a third party against the Indemnified Party (a "**Third Party Claim**") or whether the Claim does not so arise (a "**Direct Claim**"). The failure to promptly give the Indemnitor Notice hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure of the Indemnified Party to promptly give Notice.
- (c) Direct Claims - With respect to any Direct Claim, following receipt of Notice from the Indemnified Party of the Claim, the Indemnitor shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Indemnified Party shall make available to the Indemnitor the information relied upon by the Indemnified Party to substantiate the

Claim, together with all such other information as the Indemnitor may reasonably request. If the Indemnified Party and the Indemnitor agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Indemnitor shall immediately pay to the Indemnified Party, or expressly agree with the Indemnified Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

- (d) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 11.3** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (e) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in this **Section 11.3**.
- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not compromise, make any admission of liability regarding, or enter into any settlement or compromise of any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully

released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

- (g) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its Representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable third party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.
- (h) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.
- (i) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include the Indemnitor and an Indemnified Party, and such Indemnified Party has reasonably concluded that counsel selected by the Indemnitor has a conflict of interest (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to participate in the defense of such Third Party Claim on behalf of the Indemnified Party, and all other provisions of this **Section 11.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

11.4 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured claim, neither the Indemnified Party nor the Indemnitor, as the case may be, shall negotiate, settle, retain counsel to defend or defend any such Claim, without having first obtained the prior approval of the insurer(s) providing such insurance coverage.

**ARTICLE 12
LIMITATION OF DAMAGES**

12.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 11** and **Article 12** of this Agreement shall apply to any and all Claims.

12.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall a Party be liable to another Party for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement, except that such consequential, incidental, indirect or punitive damages awarded against a Party with respect to matters relating to the LTA, in favour of a third party, shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 12.2**. For the purposes of this **Section 12.2**, lost revenues or profits shall be considered to be consequential, incidental or indirect damages.

12.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to:

- (a) any insurance proceeds received or entitled to be received in relation to the Claim; and
- (b) the value of any related, determinable Tax benefits realized or capable of being realized by the affected Party in relation to the occurrence of such net loss or cost.

**ARTICLE 13
CONFIDENTIALITY**

13.1 Obligations of Confidentiality

The provisions of **Schedule 4** shall apply to Confidential Information.

13.2 Disclosure of Agreement

Each Party hereby agrees to the other Parties making this Agreement public at any time and from time to time after the Effective Date.

ARTICLE 14 ASSIGNMENT AND CHANGE OF CONTROL

14.1 LTC Assignment Rights

- (a) General - Except to a Qualified Assignee and subject to **Sections 14.1(f) and 14.1(d)**, LTC shall not assign its interest or rights under this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**LTC Rights**”).
- (b) Agreement to be Bound - No assignment may be made of the LTC Rights by LTC unless such assignment includes all of the LTC Rights and LTC obtains the written agreement of all Persons party to the assignment confirming that such Persons shall, from and after the date of the assignment, be bound by the provisions of the assigned LTC Rights.
- (c) Change of Control - A change of Control of a LTC Affiliate Assignee that would result in such LTC Affiliate Assignee no longer being an Affiliate of LTC will be deemed to be an assignment of the LTC Rights in contravention of this **Section 14.1**.
- (d) Consent Requirement - An assignment of the LTC Rights to a Person other than an Affiliate of LTC, an Acquiror or an administrative or security agent of a Financing Party shall require the prior consent of NLH.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.1** will be null and void.
- (f) Assignment to MFC – Notwithstanding any other provision of this Agreement, including, without limitation, this **Section 14.1**, LTC may assign its right to collect any and all payment owing by NLH under this Agreement to MFC by providing Notice to NLH. Such assignment shall not require prior consent of NLH. For greater certainty, assignment of LTC’s right to collect payment under this **Section 14.1(f)** shall not require that MFC enter into an assignment agreement with NLH, substantially in the form set out in **Schedule 2** or otherwise, and such assignment shall not alter in any way the other rights or obligations of LTC or NLH under this Agreement.

14.2 NLH Assignment Rights

- (a) General - NLH shall not assign this Agreement, its interests or rights hereunder, any Claim or any other agreement relating to any of the foregoing.
- (b) Non-Permitted Assignment - Any purported assignment in contravention of this **Section 14.2** will be null and void.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1 **NLH Representations and Warranties**

NLH represents and warrants to LTC that, as of the Effective Date:

- (a) it is duly created and validly existing under the laws of NL and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of NLH and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by NLH for NLH's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on NLH's ability to perform its obligations under this Agreement, and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

15.2 **LTC Representations and Warranties**

LTC represents and warrants to NLH that, as of the Effective Date:

- (a) it is duly organized, validly existing and in good standing under the laws of NL;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action on the part of LTC and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by appropriate officers and constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by LTC for LTC's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on LTC's ability to perform its obligations under this Agreement, and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 16 MISCELLANEOUS PROVISIONS

16.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

- (a) to NLH:

Newfoundland and Labrador Hydro
500 Columbus Drive

P.O. Box 12400, Station A
St. John's, NL
A1B 4K7
Attention: Corporate Secretary
Fax: (709) 737-1782

(b) to LTC:

Labrador Transmission Corporation
500 Columbus Drive
P.O. Box 15100, Station A
St. John's, NL
A1B 0M6
Attention: Corporate Secretary
Fax: (709) 737-1782

with a copy to:

Lower Churchill Management Corporation
500 Columbus Drive
P.O. Box 15150, Station A
St. John's, NL
A1B 0M7
Attention: Corporate Secretary
Fax: (709) 737-1782

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, be deemed to have been given or made on the day it was successfully transmitted as evidenced by automatic confirmation of receipt; provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Each Party may change its address or fax number hereunder from time to time by giving Notice of such change to each of the other Parties.

16.2 **Prior Agreements**

With the exception of the GIA and the MPPA, this Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein.

16.3 **Counterparts**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the

same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

16.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

16.5 Announcements

No announcement with respect to this Agreement shall be made by a Party without the prior approval of the other Parties. The foregoing shall not apply to (a) disclosure of this Agreement pursuant to **Section 13.2**, and (b) any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with each of the other Parties before making any such announcement and gives due consideration to the views of each of the other Parties with respect thereto. Each Party shall use reasonable efforts to agree on the text of any proposed announcement.

16.6 Relationship of the Parties

Each Party hereby disclaims any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship with another Party. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the matters set forth herein shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of another Party for any purpose nor to permit a Party to enter into agreements or incur any obligations for or on behalf of another Party.

16.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

16.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith and execute a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

16.9 Time of the Essence

Time shall be of the essence.

16.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all of the Parties.

16.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of such Party or otherwise reduce the obligations of the Party receiving such consent or approval.

16.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a Party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

16.13 Survival

Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of the final settlement of all accounts between the Parties arising out of this Agreement. All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

16.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (a) any proceedings under the Dispute Resolution Procedure; (b) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (c) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

16.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

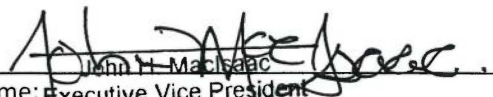
16.16 Affiliates of Nalcor

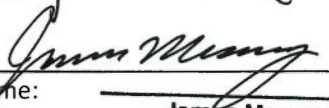
Notwithstanding any other provision of this Agreement, the NL Crown shall be deemed to not be an Affiliate of Nalcor, MFC, NLH, or LTC.

[The remainder of this page is intentionally left blank.]


IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first above written.

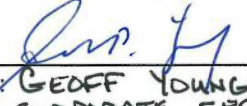
LABRADOR TRANSMISSION CORPORATION

By: 
Name: John H. MacIsaac
Title: Executive Vice President
Power Supply

By: 
Name: James Meaney
Title: VP Finance Power Supply
We have authority to bind the corporation.

NEWFOUNDLAND AND LABRADOR HYDRO

By: 
Name: JAMES R. HAYNES
Title: PRESIDENT

By: 
Name: GEOFF YOUNG
Title: CORPORATE SECRETARY AND
GENERAL COUNSEL
We have authority to bind the corporation.

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 1

LTA PROJECT DESCRIPTION

SCHEDULE 1 LTA PROJECT DESCRIPTION

The following are the components of the Labrador Transmission Assets

Section 1 Muskrat Falls Switchyard

- Switchyard is situated on the Southside of the river on a level, fenced site
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear
- Electrical layout of the switchyard is to be in accordance with the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram” attached as **Appendix A** to this **Schedule 1**. The 315kV portion is a breaker and a half arrangement consisting of sixteen 315 kV breakers and associated disconnects. The 138kV portion connects the switchyard to the existing NLH system via the 138kV transmission line L1301. There are two 138 kV breakers and associated disconnects
- Substation to interconnect the plant to the 315 kV HVac transmission lines to Churchill Falls (CF) and the HVdc Converter Station
- Substation includes two 125 MVA transformers, 315-138 KV with tertiary windings rated at 25 kV to supply station services for switchyard and converter station

Section 2 Muskrat Falls Switchyard to HVdc Converter Station

- Four 315 kV HVac feeders connecting the switchyard to the *converter station* as per the attached single line diagram. Two feeders connecting to the converter transformers and two feeders connecting to the filters.

Section 3 HVac Overland Transmission - Muskrat Falls to CF

- Two 315 kV HVac overhead transmission lines to connect the Muskrat Falls switchyard to the Churchill Falls switchyard extension
- Provision for Gull Island interconnection to be included through selected placement of dead end towers
- Transmission lines are to be carried on galvanized lattice steel towers, with self-supported angles and dead ends, and guyed suspension towers
- Transmission line power capacity is to be 900 MW for each transmission line, allowing for all load to be carried on a single circuit
- Transmission line corridor as per Key Plan
- 50 year *Reliability Level Return Period* of loads, with respect to Nalcor Energy operating experience and LCP specific modeling and test programs

- One transmission line shall have one OHGW and one OPGW and the second line shall have two OHGW
- *Counterpoise* installed from station-to-station

Section 4 CF Switchyard Extension

- Extension of the existing 735 kV main bus with two bus coupling circuit breakers and associated disconnects
- The 735kV portion is a breaker and one third arrangement consisting of three 735 kV breakers and associated disconnects with space for expansion
- The 315 kV portion is a breaker and one third arrangement consisting of six 315 kV breakers and associated disconnects with space for expansion
- Two 833 MVA, 735-315 kV auto-transformers, with tertiary windings rated at 13.8 kV to supply the substation service loads
- Accommodation of two 315 kV HVac transmission lines from MF
- Provision for space for future 735 kV and 315 kV transmission line feeders in accordance with the single line diagram
- CF switchyard extension is to be located approximately 500 m east of the existing CF switchyard on a level, fenced site and includes developed space for future 735 kV and 315 kV line feeders
- Two 735 kV transmission lines, each approximately 500 m in length, to join the existing CF switchyard to the CF switchyard extension
- Construction and operation not to adversely impact the existing CF operation
- Concrete foundations and galvanized steel structures to support the electrical equipment and switchgear

Section 5 Operations Telecommunication System - Labrador Transmission

- Telecommunication System shall be comprised of three separate layers: Optical Transport Network (OTN), Convergence, and Access Layers
- OTN Layer shall be the telecommunications backbone and utilize the OPGW, All Dielectric Self Supporting (ADSS) or equivalent fibre optic infrastructure. The OTN layer equipment nodes shall be designed based upon the least total cost of ownership alternative
- Convergence layer shall be based on the Synchronous Optical Network (SONET) international standard. It shall be used to create logical point-to-point telecommunication links between all MF locations. It will multiplex and de-multiplex the Access Layer subsystems for transmission on the OTN
- Access Layer shall be based on the Ethernet (IEEE 802.3) standard. It shall be comprised of a minimum of three separate telecommunication systems: Protection and Control, SCADA, and Administrative systems. The Administrative system may include the following subsystems: telephony, corporate data, security access control system, and video surveillance
- The Labrador Transmission Link Telecommunication Assets specifically include the following:
 - One OPGW mounted on one 315 kV HVac TL connecting

- MF 315 kV Switchyard to CF 735-315 kV Switchyard
- TLH ADSS fibre optics connecting
 - Labrador West to CF to MF to HVGB
- OTN Layer optical-electronics associated with the above referenced fibre optic interconnections
- Convergence and Access Layer telecommunication systems associated with the above referenced OTN Layer optical electronics, except these telecommunication layers at MF
- NLH ECC and BCC SCADA system upgrades and upgrades to CF SCADA system as required

Section 6 Interconnection Points

1.1 Churchill Delivery Points

- These are the points at which the 735 kV lines cross the boundary between property to be acquired by LTC and property for CFLCo
- The physical points are identified as disconnects in the CF Switchyard Extension that connect the LTA to the CFLCo Plant. They are shown as 13B135 and 14B246 on the single line titled “Churchill Falls 315/735KV Extension for Muskrat Falls Single Line Diagram”, attached as **Appendix B** to this **Schedule 1**.

1.2 Muskrat Delivery Points

- The points of interconnection between the MF Plant and the LTA
- The physical points are identified as disconnects in the Muskrat Falls Switchyard that connect the LTA to the Muskrat Falls Generating Station. They are shown as B12T1, B22T2, B11T3 and B21T4 on the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram”, attached as **Appendix A** to this **Schedule 1**.
- These disconnects are connected to the high side transformer disconnects (T1 - T4) in the Muskrat Falls Generating Station

1.3 LIL-LTA Interconnection Points

- The points of interconnection between the LIL and the LTA
- The physical points are identified as disconnects in the Muskrat Falls Switchyard that connect the LTA to the Muskrat Falls Converter Station. They are shown as B24F2, B23P2, B32P1 and B31F1 on the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram”, attached as **Appendix A** to this **Schedule 1**.
- These disconnects are connected to the Poles (Pole P1 and P2) and Filters (Filters F1 and F2) in the Muskrat Falls Converter Station

1.4 LTA - NLH System Interconnection Points

- The points of interconnection between the LTA and the existing NLH System

- The physical point is identified as the disconnect in the Muskrat Falls Switchyard that connects the LTA to the existing NLH System. This is via L1301 to Happy Valley Goose Bay. The point is shown as B41L1301-1 on the single line diagram titled “Muskrat Falls AC Switchyard 315 kV Single Line Diagram”, attached as **Appendix A** to this **Schedule 1**.

1.5 Station Service Interconnection

- The Station Service supply is shown on the single line diagram titled “Muskrat Falls AC Switchyard 315 KV Single Line Diagram”, attached as **Appendix A** to this **Schedule 1**. It is being fed from transformers T5 and T6.
- Station Service for the Muskrat Falls Switchyard is labelled as AC Substation
- Station service for the LIL (Muskrat Falls Converter Station) is labelled as Converter Station

INTERIM TRANSMISSION FUNDING AGREEMENT

APPENDIX A

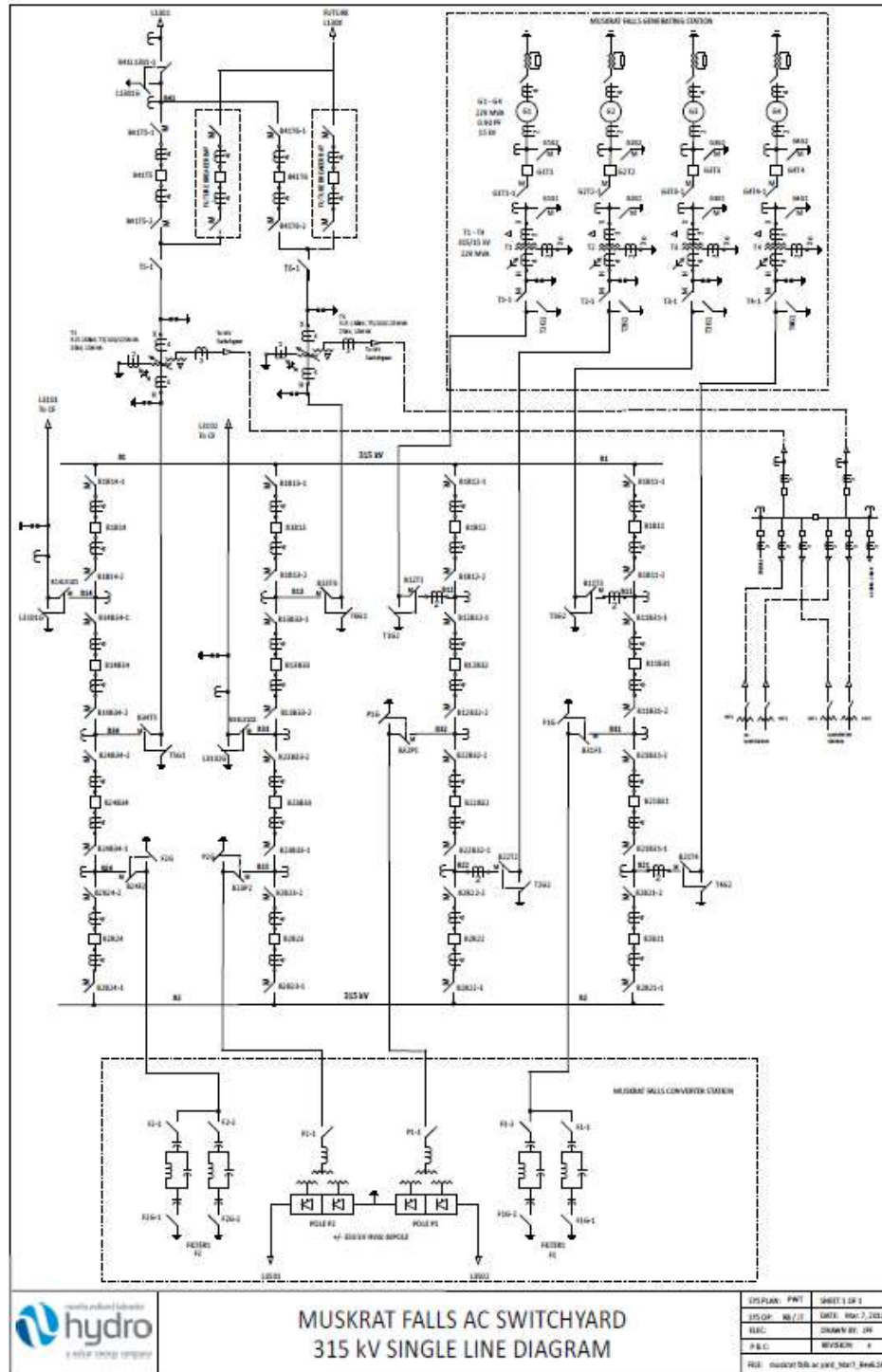
TO

LTA PROJECT DESCRIPTION

MUSKRAT FALLS AC SWITCHYARD 315 KV SINGLE LINE DIAGRAM

Appendix A

Muskkrat Plant AC Switchyard 315 kV Single Line Diagram



INTERIM TRANSMISSION FUNDING AGREEMENT

APPENDIX B

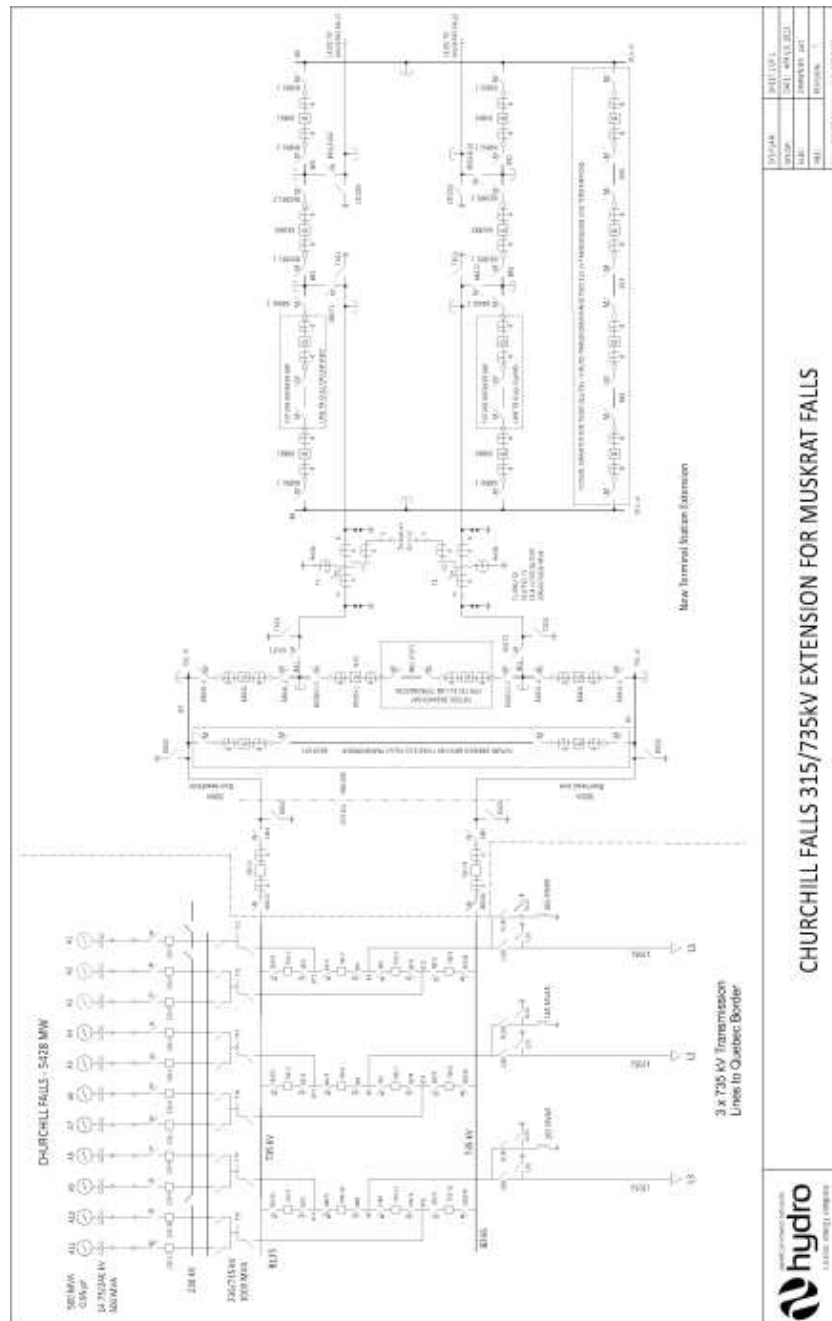
TO

LTA PROJECT DESCRIPTION

CHURCHILL FALLS 315/735KV EXTENSION FOR MUSKRAT FALLS SINGLE LINE DIAGRAM

Appendix B

Churchill Falls 315/735kV Extension for Muskrat Falls Single Line Diagram



INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 2

FORM OF ASSIGNMENT

**SCHEDULE 2
FORM OF ASSIGNMENT**

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ASSIGNMENT OF TRANSMISSION FUNDING AGREEMENT

THIS ASSIGNMENT AGREEMENT is made effective the • day of •, 20__.

AMONG:

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor ("**LTC**")

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-17 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor ("**NLH**")

- and -

<@>, a [type of entity and jurisdiction or statute of incorporation or formation], [insert basis on which assignee is permitted] (the "**Assignee**")

WHEREAS NLH and LTC entered into the Interim Transmission Funding Agreement on August 31, 2018 (the "**Interim TFA**");

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

"Affiliate" means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person, provided however that the NL Crown shall be deemed not to be an affiliate of Nalcor;

"Agreement" means this agreement, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

"Applicable Law" means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of and the terms of all judgments, orders and decrees issued by any Authorized

Authority by which such Person is bound or having application to the property, transaction or event in question;

"Assignee" means [*] an Affiliate of [LTC] [or a Holder], a Qualified Assignee of the Assignor;

"Assigned Rights" means the Interim TFA and the LTC Rights;

"Assignor" means LTC or an Affiliate of LTC, as applicable;

"Authorized Authority" means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

"Business Day" means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John's, NL;

"Consenting Parties" means [LTC, of if applicable as a result of prior assignments, specified Affiliates] and NLH;

"Control" of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person's board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **"Control"** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **"Controlled by"** and **"under common Control with"** have correlative meanings);

"Dispute Resolution Procedure" has the meaning set forth in **Section 4.1(a)**;

"Effective Date" means []; [NTD: Since the Assignee has to be a Qualified Assignee and therefore has to have all of the transmission assets and contracts transferred to it the Effective Date is to be the date when all of those transfers are effective.]

"Excise Tax Act" means the *Excise Tax Act* (Canada);

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Income Tax Act” means the *Income Tax Act* (Canada);

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;
- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Knowledge” means in the case of a Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“LRA” has the meaning set forth in the recitals;

“NLH” has the meaning set forth in the preamble to this Agreement, and includes its successors and permitted assigns;

“Nalcor” means Nalcor Energy, a NL corporation existing pursuant to the *Energy Corporation Act* (Newfoundland and Labrador), and includes its successors;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

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

“LTC Rights” has the meaning set forth in the Interim TFA;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Qualified Assignee” has the meaning set forth in the Interim TFA;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Tax” or “Taxes” means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than a tariff or fees in respect of electricity transmission services) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Interim TFA” has the meaning set forth in the recitals; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 **Construction of Agreement**

- (a) **Interpretation Not Affected by Headings, etc.** - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”** or **“Section”** followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.
- (b) **Singular/Plural; Derivatives** - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) **“Including”** - The word **“including”**, when used in this Agreement, means **“including without limitation”**.

- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

ARTICLE 2 ASSIGNMENT

2.1 Assignment to a Qualified Assignee

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Rights and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Rights and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Rights as of the Effective Date and covenants and agrees with the Assignor and the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Rights. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Rights arising on and in respect of matters occurring after the Effective Date.

2.3 Confirmation of Status of Assigned Rights

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Parties are in default of any of their obligations under the Assigned Rights. The Consenting Parties hereby confirm to the Assignee that neither they nor, to their Knowledge, the Assignor are in default of any of their respective obligations under the Assigned Rights.

2.4 Acknowledgement of Consenting Parties

The Consenting Parties acknowledge, consent to and accept the within assignment and assumption of the Assigned Rights subject to the terms and conditions herein, and confirm to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Rights. The Consenting Parties agree that from and after the Effective Date the Assignor shall not have any obligation to the Consenting Parties to observe and perform the conditions and obligations set forth in the Assigned Rights. This **Section 2.4** does not apply if Section 14.1(d) or 14.2(d) of the Interim TFA, as applicable, does not require consent to assignment.

2.5 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) HST - Notwithstanding **Section 2.5(a)**, each of the Parties acknowledges and agrees that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement

are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and

- (ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.7**.

2.6 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.6(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.7 Invoicing

All invoices issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

2.8 Payment and Offset

- (a) Subject to **Section 2.8(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.

- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.9 HST Registration Status

- (a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.
- (b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1 Assignor and Assignee Representations and Warranties

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to the Consenting Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are [no Legal Proceedings **NTD: or set out Legal Proceedings, if any**] pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents,

approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and **[NTD: set out any required Regulatory Approvals];**

- (g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and
- (h) the Assignee is an **[Affiliate][Qualified Assignee]** of the Assignor.

[NTD: Add more detailed representations as to why the Assignee is a Qualified Assignee as well as to the other transactions that need to take place concurrently with this assignment to permit the Assignee to be a Qualified Assignee.]

ARTICLE 4 DISPUTE RESOLUTION PROCEDURE

4.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule 3 to the Interim TFA (the "**Dispute Resolution Procedure**").
- (b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Interim TFA]**

ARTICLE 5 MISCELLANEOUS PROVISIONS

5.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

- (a) To Assignor:

[•]
- (b) To Assignee:

[•]
- (c) To Consenting Parties:

[•]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and be confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Any Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the Interim TFA.

5.3 Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

5.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

5.5 Announcements

No announcement with respect to this Agreement shall be made by any Party without the prior approval of the other Parties. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Parties before making any such announcement and gives due consideration to the views of the other Parties with respect thereto. The Parties shall use reasonable efforts to agree on the text of any proposed announcement.

5.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as

expressly provided herein, this Agreement shall not be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of the other Parties for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of the other Parties.

5.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

5.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all Parties.

5.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of a Party receiving such consent or approval.

5.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a Party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure; (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

5.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

[ASSIGNOR]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the
[company]/[corporation].

[ASSIGNEE]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the
[company]/[corporation].

[CONSENTING PARTY]

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

I/We have authority to bind the
[company]/[corporation].

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 3

DISPUTE RESOLUTION PROCEDURE

SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE

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**SCHEDULE 3
DISPUTE RESOLUTION PROCEDURE**

Section 1 Interpretation

1.1 Definitions

In this Schedule, the definitions set forth in the Articles of Agreement apply and in addition thereto:

“Agreement” means the agreement to which this Schedule is attached;

“Appointment Date” has the meaning set forth in **Section 6.4**;

“Arbitration Act” means the *Arbitration Act* (Newfoundland and Labrador);

“Arbitration Notice” has the meaning set forth in **Section 5.1(a)(i)**;

“Arbitration Procedure” means the provisions of **Section 5**;

“Arbitrator” means an arbitrator appointed pursuant to the Arbitration Procedure;

“Articles of Agreement” means the main body of the Agreement;

“Chair” means the person elected or appointed to chair the Tribunal;

“Code” means the Commercial Arbitration Code as set out in the *Commercial Arbitration Act* (Canada) as of the Effective Date, a copy of which is attached hereto as **Appendix A**;

“Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party consents to arbitration of the Dispute referred to in the Arbitration Notice;

“Delegate” has the meaning set forth in **Section 6.3(c)**;

“Dispute Context” has the meaning set forth in **Section 6.6**;

“Document” includes a film, photograph, videotape, chart, graph, map, plan, survey, book of account, recording of sound, and information recorded or stored by means of any device;

“Expert Determination Procedure” means the provisions of **Section 6**;

“General Dispute” means a Dispute that is not a Specified Dispute;

“Independent Expert” means the Person appointed as such to conduct an expert determination in accordance with the Expert Determination Procedure;

“Information” means all documents and information, including Confidential Information, disclosed by a Party for the purposes of this Dispute Resolution Procedure;

“Initial Meeting” has the meaning set forth in **Section 6.8**;

“Mediation Notice” has the meaning set forth in **Section 4.1(a)**;

“Mediation Procedure” means the provisions of **Section 4**;

“Mediation Response” has the meaning set forth in **Section 4.1(d)**;

“Mediator” means the mediator appointed pursuant to the Mediation Procedure;

“Negotiation Procedure” means the provisions of **Section 3**;

“Non-Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party does not consent to arbitration of the Dispute referred to in the Arbitration Notice;

“Notified Parties” has the meaning set forth in **Section 5.1(a)(i)**;

“Notifying Party” has the meaning set forth in **Section 5.1(a)(i)**;

“Referral Notice” has the meaning set forth in **Section 6.1**;

“Referring Party” has the meaning set forth in **Section 6.1**;

“Requesting Party” has the meaning set forth in **Section 4.1(a)**;

“Responding Party” has the meaning set forth in **Section 6.1**;

“Response” has the meaning set forth in **Section 6.9(b)**;

“Review Notice” has the meaning set forth in **Section 3.1**;

“Specified Dispute” means a Dispute required by the Agreement, or agreed in writing by the Parties interested in the Dispute, to be finally resolved by expert determination pursuant to this Schedule;

“Submission” has the meaning set forth in **Section 6.9(a)**;

“Terms of Reference” has the meaning set forth in **Section 6.4**; and

“Tribunal” means either a single Arbitrator or a panel of Arbitrators, as the case may be, appointed pursuant to the Arbitration Procedure to serve as the arbitrator or arbitrators of a General Dispute.

1.2 **Section References**

Unless otherwise indicated, all references in this Schedule to a “**Section**” followed by a number and/or a letter refer to the specified Section of this Schedule.

1.3 **Appendix**

The following Appendix is attached to and incorporated by reference in this Schedule, and is deemed to be part hereof:

Appendix A - Commercial Arbitration Code (Canada)

Section 2 Alternative Dispute Resolution

2.1 **Purpose and Sequence of Dispute Resolution**

The purpose of this Schedule is to set forth a framework and procedures to resolve any Disputes that may arise under the Agreement in an amicable manner, in private and confidential proceedings, and where possible, without resort to litigation. The Parties agree to exclusively utilize the following process to achieve this goal, which shall be undertaken in the following order:

- (a) first, by referring the Dispute to negotiation pursuant to the Negotiation Procedure; and
- (b) in the case of a General Dispute:
 - (i) second, by way of mediation pursuant to the Mediation Procedure; and
 - (ii) third, either:
 - (A) by arbitration pursuant to the Arbitration Procedure where the Parties agree or are deemed to have agreed to arbitration; or
 - (B) by litigation, where the Parties do not agree and are not deemed to have agreed to arbitration pursuant to the Arbitration Procedure; or
- (c) in the case of a Specified Dispute, second by expert determination in accordance with the Expert Determination Procedure.

2.2 **Confidentiality**

- (a) Subject to **Section 2.2(b)**, all Information disclosed by a Party pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure shall be treated as confidential by the Parties and any Mediator, Arbitrator or Independent Expert. Neither the disclosure nor production of Information will represent any waiver of privilege by the disclosing

Party. Each Party agrees not to disclose Information provided by the other Party for the purposes hereof to any other Person for any other purpose. Further, such Information shall not be used in any subsequent proceedings without the consent of the Party that disclosed it.

- (b) **Section 2.2(a)** does not prevent a Party from disclosing or using Information not received by it exclusively pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure as and to the extent permitted under the Agreement.

2.3 **Interim Measures**

Either Party may apply to a court for interim measures to protect its interest during the period that it is attempting to resolve a Dispute prior to the constitution of a Tribunal, including preliminary injunction or other equitable relief concerning that Dispute. The Parties agree that seeking and obtaining any such interim measure will not waive the Parties' obligation to proceed in accordance with **Section 2.1**.

2.4 **Mediator or Arbitrator as Witness**

The Parties agree that any Mediator or Arbitrator appointed hereunder shall not be compelled as a witness in any proceedings for any purpose whatsoever in relation to the Agreement.

Section 3 Negotiation Procedure

3.1 **Negotiation of Dispute**

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by any Party requesting a review under this **Section 3** by Notice to the other Parties (a "**Review Notice**"). Each Party shall be afforded a reasonable opportunity to present all relevant Information regarding its position to the other Party's representative. The Parties shall consider the Information provided and seek to resolve the Dispute through negotiation. Negotiations shall be concluded within 15 Business Days from the date of delivery of the Review Notice or within such extended period as may be agreed in writing by the Parties.

3.2 **Reservation of Rights**

Except to the extent that such negotiations result in a settlement, such negotiations and exchange of Information will be without prejudice and inadmissible against a Party's interest in any subsequent proceedings and no Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

3.3 **Failure of Negotiations**

If the Parties have not resolved the Dispute to the satisfaction of both Parties within 15 Business Days after delivery of the Review Notice, or within such extended period as may be agreed in writing by the Parties, negotiations will be deemed to have failed to resolve the Dispute and any Party may then request that the matter be referred to non-binding mediation pursuant to the Mediation Procedure.

Section 4 Mediation Procedure

4.1 **Request for Mediation**

- (a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the “**Requesting Party**”), by Notice to the other Party given within five Business Days after expiry of the period set forth in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a “**Mediation Notice**”) containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.
- (b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.
- (c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:
 - (i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;
 - (ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;
 - (iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;
 - (iv) a Party gives Notice to the other Parties that it terminates the mediation;
 - (v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;
 - (vi) **Section 4.3(d)** applies; or
 - (vii) the Dispute is settled as provided in **Section 4.4**.

- (d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the “**Mediation Response**”) to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 **Appointment of Mediator**

Within 10 Business Days after receipt of the Mediation Response by the Requesting Party, the Parties shall attempt to appoint a Mediator to assist the parties in resolving the Dispute. The appointment shall be in writing and signed by the Parties and the Mediator.

4.3 **Mediation Process**

- (a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.
- (b) The location of the mediation will be St. John’s, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.
- (c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.
- (d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.
- (e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally (or in such other proportions as they may agree), including the costs of or attributable to the Mediator and the facilities used for the mediation.

4.4 **Reservation of Rights**

Any mediation undertaken hereunder will be non-binding, and except to the extent a settlement is reached, will be considered without prejudice and inadmissible against a Party’s interest in any subsequent proceedings and no Party will be considered to have waived any

privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

Section 5 Arbitration Procedure

5.1 Submission to Binding Arbitration

- (a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3**:
 - (i) a Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Parties (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, any Party may elect, by giving notice thereof to the other Parties, to proceed with resolution of the General Dispute pursuant to **Section 2.1(b)(ii)(B)**.
- (b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.
- (c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.
- (d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.
- (e) Notwithstanding **Sections 5.1(b), 5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.
- (f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by arbitration pursuant to this **Section 5**. The arbitration will be subject to the Arbitration Act and conducted in accordance with the Code, as supplemented and modified by this **Section 5**.

5.2 Provisions Relating to the Arbitration Act and the Code

- (a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.

- (b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.
- (c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the “arbitration agreement”.
- (d) A reference in the Code to “a court or other authority specified in article 6”, will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.
- (e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.
- (f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.
- (g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.
- (h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.
- (i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 **Appointment of Tribunal**

- (a) Subject to **Section 5.4**, the arbitration will be heard and determined by three Arbitrators. Each Party shall appoint an Arbitrator of its choice within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration. The Party-appointed Arbitrators shall in turn appoint a third Arbitrator, who shall act as Chair of the Tribunal, within 20 Business Days after the appointment of both Party-appointed Arbitrators. If the Party-appointed Arbitrators cannot reach agreement on a third Arbitrator, or if a Party fails or refuses to appoint its Party-appointed Arbitrator within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration, the appointment of the Chair of the Tribunal and the third Arbitrator will be made in accordance with Article 11 of the Code.
- (b) Except for the appointment of an Arbitrator pursuant to the Code, the appointment of an Arbitrator must be in writing and accepted in writing by the Arbitrator.

5.4 **Arbitration by Single Arbitrator**

The arbitration will be heard and determined by one Arbitrator where the Parties agree to arbitration by a single Arbitrator and jointly appoint the Arbitrator within 15 Business Days after the Consent to Arbitration is given or deemed to have been given. If the Parties do not agree to arbitration by a single Arbitrator and appoint the Arbitrator within such time, the arbitration will be heard by three Arbitrators appointed pursuant to **Section 5.3**.

5.5 **Procedure**

- (a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.
- (b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.
- (c) If the Parties initiate multiple arbitration proceedings under the Agreement and any other agreement to which they are all parties, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may, with the written consent of all Parties in all such proceedings, be consolidated into a single arbitration proceeding.
- (d) The Parties may agree as to the manner in which the Tribunal shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing such agreement within 20 Business Days from the date of selection or appointment of the Tribunal, the Tribunal shall promptly and expeditiously conduct the arbitration proceedings in accordance with the Code. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.
- (e) Nothing in this **Section 5** will prevent either Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with the Arbitration Procedure, or to prevent manifestly unfair or unequal treatment of either Party.
- (f) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Schedule or of the Code.

5.6 **Awards**

- (a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.
- (b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.

- (c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.
- (d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.
- (e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus 3% per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is Paid in Full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 **Settlement**

If the Parties settle the Dispute before the Tribunal delivers its written award, the arbitration will be terminated and the Tribunal shall record the terms of settlement in the form of an award made on consent of the Parties.

Section 6 Expert Determination Procedure

6.1 **Referral for Expert Determination**

A Party (the “**Referring Party**”) may by Notice to another Party (the “**Responding Party**”) require referral of a Specified Dispute to an Independent Expert for determination pursuant to this **Section 6** (the “**Referral Notice**”).

6.2 **Qualifications of Independent Expert**

Any Independent Expert appointed under this **Section 6** shall be:

- (a) independent of each of the Parties;
- (b) of national or international standing;
- (c) well qualified by education, technical training and experience, and hold the appropriate professional qualifications, to determine the matters in issue in the Specified Dispute; and
- (d) impartial and have no interest or obligation in conflict with the task to be performed as an Independent Expert for the Parties. Without limiting the generality of the foregoing, a conflict will be deemed to exist, unless otherwise agreed in writing by the Parties, if the Independent Expert at any time previously performed work in connection with matters covered by the Agreement, or during the preceding three

years performed any other work for either of the Parties or any of their Affiliates. Any direct or beneficial equity interest the Independent Expert has in one or more of the Parties or their Affiliates, or *vice versa*, shall be declared by each Party and the Independent Expert prior to the Independent Expert being retained.

6.3 Selection of the Independent Expert

- (a) Within 10 Business Days after delivery of the Referral Notice, each Party shall deliver to the other Party, in a simultaneous exchange, a list of the names of five Persons (ranked 1 - 5 in order of preference, 5 being that Party's first preference) who are acceptable to the Party to act as the Independent Expert. If one Person only is named in both lists, that Person shall be the Independent Expert to determine the Specified Dispute. If more than one Person is named in both lists, the Person with the highest total numerical ranking, determined by adding the rankings from both lists, shall be the Independent Expert to determine the Specified Dispute. In the event of a tie in the rankings, the Person to be the Independent Expert shall be selected by lot from among those of highest equal rank.
- (b) If the Parties fail to select an Independent Expert from the initial lists provided pursuant to **Section 6.3(a)**, the process under **Section 6.3(a)** shall be repeated with a second list of five names from each Party, except that the Parties shall exchange lists within five Business Days after the end of the 10 Business Day period under **Section 6.3(a)**.
- (c) If the Parties fail to select an Independent Expert pursuant to **Section 6.3(a)** or **6.3(b)** or otherwise within 15 Business Days after the Referral Notice is given, within a further period of five Business Days after the end of such 15 day period the Parties shall jointly request the President of ADR Chambers in Toronto, Ontario or his or her designate (the "**Delegate**") to appoint the Independent Expert from a list submitted by the Parties with the request. Each Party may nominate up to three proposed Independent Experts for inclusion on the list. The Parties shall not advise the Delegate which Party nominated a particular nominee. Each Party shall be responsible for one-half of the costs of the Delegate.

6.4 Terms of Reference

Once an Independent Expert is selected pursuant to **Section 6.3**, the Parties shall use commercially reasonable efforts to enter into an appropriate engagement agreement with the Independent Expert (the "**Terms of Reference**") as soon as practicable, and in any event within 20 Business Days, after selection of the Independent Expert pursuant to **Section 6.3**. Failure of the Parties and the Independent Expert to agree upon the Terms of Reference will be deemed to be a General Dispute and the Terms of Reference will be resolved by a single Arbitrator pursuant to the Arbitration Procedure. The date of execution of the Terms of Reference by all of the Parties and the Independent Expert is herein called the "**Appointment Date**".

6.5 **Information Provided to Independent Expert**

For the purpose of the Expert Determination Procedure, the Parties shall provide to the Independent Expert the following within five Business Days after the Appointment Date:

- (a) a copy of the Agreement, including the Schedules;
- (b) copies of or full access to all documents relevant to the Specified Dispute to be determined by the Independent Expert; and
- (c) other data and reports as may be mutually agreed by the Parties.

6.6 **Dispute Context**

The Independent Expert shall review and analyze, as necessary, the materials provided to it by the Parties pursuant to **Section 6.5**. The Independent Expert shall make its determination pursuant to the Terms of Reference based upon the materials provided by the Parties and in accordance with the Article, Section or Schedule of the Agreement under which the Specified Dispute to be determined arose (the “**Dispute Context**”).

6.7 **No ex parte Communication**

No communication between the Independent Expert and either of the Parties shall be permitted from the Appointment Date until after delivery of the Independent Expert’s final decision except:

- (a) with the approval of both Parties;
- (b) as provided by this **Section 6**; or
- (c) to address strictly administrative matters.

All communications permitted by this **Section 6.7** between either Party and the Independent Expert shall be conducted in writing, with copies sent simultaneously to the other Party in the same manner.

6.8 **Initial Meeting and Joint Presentations by the Parties**

Within 10 Business Days after the Appointment Date, the Independent Expert and the Parties shall attend an initial informational meeting (the “**Initial Meeting**”) in St. John’s, Newfoundland and Labrador, or at such other location as may be mutually agreed by the Parties, at a time, date and location as determined by the Independent Expert, at which the Parties shall provide an overview of the Specified Dispute to be determined, review the Expert Determination Procedure, and establish a timetable and deadlines for the Independent Expert’s review, all of which are to be consistent with the Agreement.

6.9 **Written Submissions and Responses**

- (a) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after the Initial Meeting, each Party shall provide to the Independent Expert a written submission (a “**Submission**”) respecting its interpretation and evaluation of the Specified Dispute.
- (b) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after receipt of the other Party’s Submission, each Party shall have the opportunity to provide comments on the other Party’s Submission by written submissions (a “**Response**”) provided to the Independent Expert and the other Party.
- (c) The Parties shall provide any Information deemed necessary by the Independent Expert to complete the evaluation required pursuant to this **Section 6**.
- (d) A Party that fails to submit a Submission or a Response to the Independent Expert within the time allowed by this **Section 6.9** will be deemed to have waived its right to make a Submission or Response, as the case may be.

6.10 **Independent Expert Clarifications**

- (a) Following receipt of the Submissions and Responses, the Independent Expert may, at its discretion, seek any number of clarifications with respect to any aspect of either Party’s Submission or Response. Such requests for clarifications shall be made by the Independent Expert in writing and the clarifications by the Parties shall be made in writing as requested by the Independent Expert, provided that the other Party shall be provided with a copy of such requests and clarifications.
- (b) The purpose of such clarifications will be to allow the Independent Expert to fully understand the technical and/or financial basis and methodologies used in the preparation of the Submission and Response of each Party, it being understood that each Party’s Submission and Response will be the primary basis upon which the Independent Expert shall make its determination.
- (c) All requests for clarifications and all questions in relation thereto will be initiated or posed exclusively by the Independent Expert to the Party from whom clarification is sought as seen fit by the Independent Expert, in its sole discretion, and free of any interruption or interjection by the other Party. Neither Party will have any right to cross-examine the other Party in respect of such Party’s Submission or Response or its responses to the Independent Expert pursuant to this **Section 6.10**.

6.11 **Method of Evaluation**

- (a) The Independent Expert’s assessment shall include the method of evaluation elements set forth in the Dispute Context.

- (b) The Independent Expert's assessment, including its economic model, cash flows and analysis, if any, will be made available to the Parties.

6.12 Decision and Presentation of Report

The Independent Expert shall complete its assessment and deliver a written decision of its determination of the Specified Dispute within 40 Business Days after the Independent Expert's receipt of the Responses.

6.13 Costs of Expert Determination

Each Party shall be responsible for one-half of the costs of the Independent Expert. Each Party shall bear its own costs related to the expert determination.

6.14 Effect of Determination

- (a) The Independent Expert's determination pursuant to this **Section 6** will be final and binding upon the Parties and not reviewable by a court for any reason whatsoever.
- (b) The Independent Expert is not an arbitrator of the Specified Dispute and is deemed not to be acting in an arbitral capacity. The Independent Expert's determination pursuant to this **Section 6** is not an arbitration under the Arbitration Act or any other federal or provincial legislation.

6.15 Settlement

If the Parties settle the Specified Dispute before the Independent Expert delivers its written decision, the Expert Determination Procedure will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

INTERIM TRANSMISSION FUNDING AGREEMENT

APPENDIX A

TO

DISPUTE RESOLUTION PROCEDURE

COMMERCIAL ARBITRATION CODE

COMMERCIAL ARBITRATION CODE

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

Note: The word "international", which appears in paragraph (1) of article 1 of the Model Law, has been deleted from paragraph (1) of article 1 below. Paragraphs (3) and (4) of article 1, which contain a description of when arbitration is international, are deleted. Paragraph (5) appears as paragraph (3).

Any additions or substitutions to the Model Law are indicated by the use of italics.

Except as otherwise indicated, the material that follows reproduces exactly the Model Law.

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

(1) This Code applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.

(2) The provisions of this Code, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.

(3) This Code shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Code.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this Code:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;
- (d) where a provision of this Code, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Code refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Code, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

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- (f) where a provision of this *Code*, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (c) a party fails to act as required under such procedure, or
 - (d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(e) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12 GROUNDS FOR CHALLENGE

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

ARTICLE 13 CHALLENGE PROCEDURE

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

ARTICLE 15
APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17
POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18
EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

- (1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 20
PLACE OF ARBITRATION

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 22
LANGUAGE

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

ARTICLE 25
DEFAULT OF A PARTY

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of *Canada* assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

ARTICLE 29

DECISION-MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

ARTICLE 30

SETTLEMENT

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31

FORM AND CONTENTS OF AWARD

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
 - (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this *Code* from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

ARTICLE 5
EXTENT OF COURT INTERVENTION

In matters governed by this *Code*, no court shall intervene except where so provided in this *Code*.

ARTICLE 6
COURT OR OTHER AUTHORITY FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE AND SUPERVISION

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by *the Federal Court or any superior, county or district court*.

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(c) a party fails to act as required under such procedure, or

(d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

ARTICLE 32
TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 4

CONFIDENTIAL INFORMATION

**SCHEDULE 4
CONFIDENTIAL INFORMATION**

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SCHEDULE 4 CONFIDENTIAL INFORMATION

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Agreement:

"Agreement" means the agreement to which this Schedule is attached;

"ATIPPA" means the *Access to Information and Protection of Privacy Act* (Newfoundland and Labrador);

"Authorized Purpose" means a purpose associated with the rights and obligations set forth in the Agreement;

"ECA" means the *Energy Corporation Act* (Newfoundland and Labrador);

"Lender Recipient" has the meaning set forth in **Section 2.3**;

"Representatives" means Affiliates, partners, directors, officers and employees of a Party or any of its Affiliates, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party or any of its Affiliates in any way in connection with the Authorized Purpose;

"Schedule" means this **Schedule 4 - Confidential Information**;

"Trade Secret" means information that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 2 Confidentiality and Restricted Use

2.1 Subject to the terms and conditions of this Schedule, the Receiving Party shall not use the Confidential Information furnished to it by the Disclosing Party or its Representatives for any purpose other than for the Authorized Purpose and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which shall in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

2.2 The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in **Section 2.3** and **Section 4** of this **Schedule**.

2.3 The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

- (a) be informed by the Receiving Party of the confidential nature of such Confidential Information; and
- (b) unless such Representative or Lender Recipient is already bound by a duty of confidentiality to the Receiving Party that is substantially similar to the obligations under the Agreement, be directed by the Receiving Party, and such Representative or Lender Recipient shall agree in writing, before receipt of such Confidential Information, to be bound by the obligations of, and to treat such Confidential Information in accordance with the terms and conditions of, the Agreement as if it were a Party hereto.

2.4 The Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or, if so requested in writing by the Disclosing Party, destroy and certify such destruction (such certificate to be signed by an officer of the Receiving Party), all Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party or its Representatives relating to the Confidential Information of the Disclosing Party, within thirty days of a written request by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Confidential Information only for administering compliance with the Agreement or if required to retain such information for regulatory purposes, but such copies must be securely maintained and segregated from other records of the Receiving Party.

2.5 The obligations of confidentiality with respect to Confidential Information shall endure and remain in force until the fifth anniversary of the expiry of the Interim TFA Term (the “**Term**”), provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the fifth anniversary of the expiry of the Term for such additional period as such information remains a Trade Secret. The provisions hereof which expressly or by their nature survive termination or expiration shall survive termination or expiration of the Agreement.

2.6 Notwithstanding the foregoing, the obligations set forth herein shall not extend to any information which:

- (a) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this Schedule or other obligation of confidentiality;
- (b) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this Schedule or other obligation of confidentiality;

- (c) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
- (d) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
- (e) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this Schedule or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
- (f) is approved in writing in advance for release by the Disclosing Party.

2.7 Each Party agrees that it shall ensure compliance with and be liable for any violation of this Schedule by that Party's Representatives and that it will indemnify and hold harmless the other Party and its Representatives against any losses, costs, damages and claims suffered or incurred by or asserted against such Party or its Representatives flowing from such violation. This indemnity shall survive termination of the Agreement.

2.8 Each Receiving Party agrees that each Disclosing Party may be irreparably damaged by any unauthorized disclosure, communication or use of the Disclosing Party's Confidential Information by the Receiving Party or its Representatives and that monetary damages may not be sufficient to remedy any breach by the Receiving Party or its Representatives of any term or provision of the Agreement and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to any other remedy available at law or in equity.

Section 3 Acknowledgments

The Receiving Party agrees with the Disclosing Party that:

- (a) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) except as may be explicitly set forth in a separate agreement involving the Parties, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

- (d) no licence to the Receiving Party under any copyright, trademark, patent or other intellectual property right is either granted or implied by the conveying of Confidential Information to the Receiving Party.

Section 4 Disclosures Required By Law

4.1 NLH and its Affiliates and LTC and its Affiliates are at all times subject to the provisions of Newfoundland and Labrador legislation as such legislation may be amended or varied, including ATIPPA. Each of the Parties acknowledge that the other Parties and their respective Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of the Agreement.

4.2 The Parties hereby acknowledge and agree that the Confidential Information disclosed by another Party is “commercially sensitive information” as defined in the ECA and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to the other Parties, as applicable. It is further acknowledged and agreed that each Party has represented to the other Parties that the Confidential Information disclosed is treated consistently in a confidential manner by each of them and is customarily not provided to their competitors. Therefore, the Parties shall each refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of NL Trial Division, may occur. To the extent permitted by ATIPPA at each step in this process, the Parties, as applicable, will argue against disclosure, support any submission against disclosure, and be entitled to be represented and make arguments in support of non-disclosure.

4.3 If the Receiving Party or any of its Representatives is required by Applicable Law or requested by any Person pursuant to ATIPPA, or by any Authorized Authority under any circumstances, to disclose any Confidential Information, then, subject to Applicable Law, the Receiving Party may only disclose Confidential Information if, to the extent permitted by Applicable Law, it has:

- (a) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
- (b) obtained a written legal opinion that disclosure is required;
- (c) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
- (d) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;

- (e) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
- (f) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

4.4 Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of the Agreement, provided that all relevant obligations under the Agreement, including **Section 4.3**, have been met. For the avoidance of doubt, each Party and its respective Affiliates shall have no liability to the other Parties and their Affiliates for any disclosure of Confidential Information that is lawfully required to be made pursuant to ATIPPA.

4.5 In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (a) any proceeding among the Parties or any of their Affiliates; or
- (b) any proceeding between a Receiving Party and another Person.

In connection with the foregoing, every Receiving Party shall consent to such an order of confidentiality upon request of the relevant Disclosing Party. Any Confidential Information that is required to be disclosed but is subject to an order of confidentiality or similar order shall continue to be Confidential Information subject to protection under this Schedule.

INTERIM TRANSMISSION FUNDING AGREEMENT

SCHEDULE 5

AMENDING AGREEMENT

**SCHEDULE 5
INTERIM TRANSMISSION FUNDING AMENDING AGREEMENT**

THIS INTERIM TRANSMISSION FUNDING AMENDING AGREEMENT is made as of the ____ day of _____, 20____ (the “**Amending Agreement**”).

BETWEEN:

LABRADOR TRANSMISSION CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor (“**LTC**”);

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a corporation continued pursuant to the *Hydro Corporation Act, 2007* (Newfoundland and Labrador) being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor (“**NLH**”).

WHEREAS the Parties entered into an Interim Transmission Funding Agreement (the “**Interim TFA**”) dated the 31st day of August, 2018;

AND WHEREAS pursuant to the terms of the Interim TFA, the Parties agreed to enter into this Amending Agreement upon satisfaction of certain conditions;

AND WHEREAS the Parties wish to amend the Interim TFA as hereinafter set forth in this Amending Agreement;

NOW THEREFORE THIS AMENDING AGREEMENT WITNESSES that, in consideration of the premises and mutual covenants and agreements hereinafter set forth and contained, the Parties hereto agree as follows:

1. The following definitions shall be added to Section 1.1 of the Interim TFA:

“**Actual Annual Financing Cost Statement**” has the meaning set forth in **Section 3.4(c)**.

“**Interim Financing Invoice**” has the meaning set forth in **Section 3.4(e)**.

“**Monthly Financing Costs**” has the meaning set forth in **Section 3.4(a)**.

“**Quarterly Financing Cost Statement**” has the meaning set forth in **Section 3.4(b)**.

2. **Section 3.4** of the Interim TFA shall be deleted in its entirety and replaced with the following:
- (a) Accrual of Monthly Financing Costs - Interim Financing Costs for the first month, or part thereof, of the Interim TFA Term shall become due and owing by NLH to LTC on the Effective Date and thereafter shall be owed monthly during the Interim TFA Term (the “**Monthly Financing Costs**”).
 - (b) Calculation of Monthly Financing Costs - Within 15 days after the end of each Quarter or partial Quarter during which Monthly Financing Costs have accrued and become owing by NLH to LTC, LTC shall deliver to NLH a Notice (the “**Quarterly Financing Cost Statement**”) setting out the actual Monthly Financing Costs owed for the previous Quarter. The Quarterly Financing Cost Statement shall set out the actual monthly financing costs owed for each calendar month (or part thereof) during the quarter.
 - (c) Annual Adjustment - Within 60 days after the end of the prior Operating Year, LTC shall deliver to NLH a Notice setting out the actual amount of the Interim Financing Costs owed by NLH to LTC for the prior Operating Year (the “**Actual Annual Financing Cost Statement**”), addressing in detail and with supporting documentation, any discrepancies from the total sum of Quarterly Financing Cost Statements delivered during such Operating Year. The amount (whether positive or negative) by which the Actual Annual Financing Cost Statement differs from the total sum of the Quarterly Financing Cost Statements delivered for such Operating Year shall be adjusted between LTC and NLH such that the Actual Annual Financing Cost Statement becomes payable in accordance with **Section 3.4(e)**.
 - (d) Further Adjustments - After the annual adjustment is made pursuant to **Section 3.4(c)**, should a Party discover or obtain written evidence of an error made in the calculation of Interim Financing Costs during a previous Operating Year, such Party shall forthwith provide Notice of such error and the supporting documentation in its possession to the other Party. On verification of the error by the other Party or, if applicable, pursuant to the Dispute Resolution Procedure, the accrual or payment of funds to address such error shall be made by the applicable Party within 10 days, or in accordance with **Section 3.4(e)**.
 - (e) Actual Payment of Interim Financing Costs – Payment of Interim Financing Costs by NLH to LTC, or such other entity to which the right to receive such payment is assigned pursuant to **Section 14.1(f)** of this Agreement, shall commence upon the Commissioning Date and shall be paid as determined in accordance with the methodology outlined in Schedule 1 of the GIA. LTC shall not later than 30 days prior to the commencement of each year during the Service Life of the LTA issue to NLH a Notice (the “**Interim Financing Invoice**”) setting out the amount due for the

following year. The Interim Financing Invoice shall set out the monthly payment due for each calendar month (or part thereof) in the applicable year.

3. This Amending Agreement shall be effective from the date hereof and, unless subsequently amended, shall remain in full force and effect from such date.
4. Unless otherwise defined, all capitalized terms and expressions used herein shall have the meaning respectively ascribed thereto in the Interim TFA.
5. This Amending Agreement is supplementary to the Interim TFA and is read with and construed in accordance with the Interim TFA, as the case may be, as if this Amending Agreement and the Interim TFA, as amended, constitute one (1) agreement.
6. In the event of any conflict between the provisions of this Amending Agreement and the Interim TFA, the provisions of this Amending Agreement shall prevail.
7. Except as this Amending Agreement otherwise provides, the Interim TFA is in all respects ratified and confirmed and all terms, provisions and covenants thereof shall remain in full force and effect.
8. This Amending Agreement shall be binding upon and enure to the benefit of each of the parties hereto and their respective successors and assigns.

(Remainder of page intentionally blank. Signature page to follow.)

IN WITNESS WHEREOF the Parties hereto have executed and delivered this Amending Agreement as of the day and year first above written.

**LABRADOR TRANSMISSION
CORPORATION**

Per:

Title:

Per:

Title:

NEWFOUNDLAND AND LABRADOR HYDRO

Per:

Title:

Per:

Title:

Execution Page to an Amending Agreement between Labrador Transmission Corporation and Newfoundland and Labrador Hydro dated as of the ____ day of _____, 20__.

NALCOR ENERGY

and

NEWFOUNDLAND AND LABRADOR HYDRO

**MINIMUM PERFORMANCE GUARANTEE
LIL & LTA – TRANSMISSION AVAILABILITY**

August 31, 2018

**MINIMUM PERFORMANCE GUARANTEE
LIL & LTA**

THIS AGREEMENT is signed the 31st day of August, 2018.

B E T W E E N :

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act*, being Chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown ("**Nalcor**");

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a body corporate continued pursuant to the *Hydro Corporation Act*, being Chapter H-17 of the *Statutes of Newfoundland and Labrador, 2007*, and a wholly-owned subsidiary of Nalcor ("**NLH**")

WHEREAS:

- A. Labrador-Island Link Limited Partnership (the "**Partnership**") and NLH entered into an Interim Transmission Funding Agreement dated August 31, 2018 (the "**LIL Interim TFA**") which enables recovery of certain costs by the Partnership from NLH, which costs arise as a result of NLH's request to have the LIL available for use prior to the Commissioning Date to enable delivery of off-island purchases to displace usage of the Holyrood oil-fired plant until the MF Plant achieves commissioning;
- B. Labrador Transmission Corporation ("**LTC**") and NLH entered into an Interim Transmission Funding Agreement dated August 31, 2018 (the "**LTC Interim TFA**") which enables recovery of certain costs by LTC from NLH, which costs arise as a result of NLH's request to have the LTA available for use prior to the Commissioning Date to enable delivery of off-island purchases to displace usage of the Holyrood oil-fired plant until the MF Plant achieves commissioning;
- C. NLH has entered into a Network Integration Transmission Service Agreement with the NLSO to use the NL Transmission System, which will include the LIL and LTA when they are available for commercial service, to deliver off-island energy purchases to the Island Interconnected System to displace usage of the Holyrood oil-fired plant until the MF Plant achieves commissioning;
- D. NLH and LTC are wholly-owned subsidiaries of Nalcor;
- E. Labrador-Island Link General Partner Corporation, a wholly-owned subsidiary of Nalcor, is the general partner of the Partnership; and

- F. Nalcor has agreed to provide a minimum performance guarantee to NLH in relation to the the Partnership and LTC making the LIL and LTA available for commercial operations during the MPG Term (as defined herein).

NOW THEREFORE this Agreement witnesses that for the consideration of one dollar and the mutual covenants hereinafter contained, the Parties, intending to be legally bound, agree as follows:

1. Definitions – Unless otherwise defined herein, capitalized terms in this Agreement, shall have the same meaning as set out in the LIL Interim TFA and the LTC Interim TFA, as determined by context. In this Agreement, the following definitions shall apply:
 - (a) “**LIL Interim TFA**” has the meaning set out in the recitals;
 - (b) “**LTC**” has the meaning set out in the recitals;
 - (c) “**LTC Interim TFA**” has the meaning set out in the recitals;
 - (d) “**MPG Term**” has the meaning set out in Section 2;
 - (e) “**Net Savings**” means the cost of fuel avoided at the Holyrood oil-fired plant through the procurement of all off-island power purchases by NLH, less the cost of off-island power purchases by NLH (including the cost of extra-provincial transmission tariffs and all transmission losses), less Operation and Maintenance Costs incurred and paid by NLH pursuant to the LIL Interim TFA and the LTC Interim TFA all as calculated during the MPG Term; and
 - (f) “**Partnership**” has the meaning set out in the recitals.
2. Minimum Performance Guarantee Term - Unless otherwise agreed to in writing by the parties, this Agreement shall become effective on the Effective Date of both the LIL Interim TFA and the LTC Interim TFA, and shall terminate upon the termination of the LIL Interim TFA Term and the LTC Interim TFA Term (the “**MPG Term**”).
3. Guarantee
 - (a) In the event that:
 - i. NLH does not realize Net Savings as a result of entering into the LIL Interim TFA and the LTC Interim TFA, as determined upon the expiration of the terms of the LIL Interim TFA and LTC Interim TFA; and
 - ii. NLH’s failure to realize Net Savings, as outlined in Section 3(a)(i), is the direct result of a failure of the Partnership or LTC to make the LIL or LTA available for commercial operations as necessary to enable delivery of an average of 32 GWh of energy per month to the Island Interconnected System via the LIL and LTA over the MPG Term;

Nalcor agrees to provide compensation to NLH in accordance with Sections 3(b) and 3(c) of this Agreement.

(b) In the event that NLH does not realize Net Savings as a result of any event or issue other than a failure of the LIL or LTA, including, without limitation:

- i. an event of Force Majeure impacting the ability of the Partnership or LTC to make the LIL or LTA available for commercial operations as necessary to enable delivery of an average of 32 GWh of energy per month;
- ii. issues with the CFLCo Plant affecting delivery of energy to the Island Interconnected System;
- iii. issues with any off-island transmission or generating assets other than the LIL or LTA which affect delivery of energy to the Island Interconnected System;
- iv. issues with the Island Interconnected System;
- v. unexpected changes to the cost of off-island purchases, or the cost of usage of the Holyrood oil-fired plant; or
- vi. a decision by NLH to use energy from the Holyrood oil-fired plant, energy delivered over the Maritime Link, or energy from other on-island sources rather than energy delivered over the LIL and LTA resulting from any circumstances, including, without limitation, those set out in this Section 3(b);

the amount of compensation payable by Nalcor in accordance with Section 3(a) shall be reduced by the proportion to which the foregoing events cumulatively affected the lack of Net Savings for NLH.

(c) Compensation to be provided by Nalcor to NLH shall be calculated as follows:

$$\text{Compensation} = \frac{[(\text{MPG Term Length} * 32 \text{ GWh}) - \text{Actual Deliveries} - \text{Exclusions}] * \text{Total O\&M Costs}}{(\text{MPG Term Length} * 32 \text{ GWh})}$$

Where:

Actual Deliveries means the total energy delivered to the Island Interconnected System via the LIL and LTA over the MPG Term Length, measured in GWh at Soldiers Pond.

Exclusions means the reduction in total energy delivered to the Island Interconnected System via the LIL and LTA during the MPG Term as a result of issues or events outlined in Section 3(b), measured in GWh.

MPG Term Length is duration in months of the MPG Term, where partial months are reflected as fractions.

Total O&M Costs is the total Operation and Maintenance Costs incurred and paid by NLH during the MPG Term, less any amounts recoverable by NLH from the Partnership or LTC under the terms of the LIL Interim TFA or LTA Interim TFA.

provided however that payment of such compensation shall not result in NLH realizing Net Savings in excess of One Dollar (\$1.00).

4. Force Majeure – Notwithstanding Section 3 of this Agreement, in the event that Nalcor or one of its subsidiaries receive net proceeds (after payment of all incremental transmission tariffs and other costs, and accounting for transmission losses) from the export of excess recall power made available as a result of an event of Force Majeure which impacts the ability of the Partnership or LTC to make the LIL or LTA available for commercial operations as necessary to enable delivery of an average of 32 GWh of energy per month to the Island Interconnected System via the LIL and LTA over the MPG Term, Nalcor will compensate NLH an amount equal to such net proceeds realized by Nalcor or its subsidiaries as a result of the export of such excess recall power, provided however that the total compensation payable in accordance with Section 3 and this Section 4 shall not result in NLH realizing Net Savings in excess of One Dollar (\$1.00).
5. Calculation of Excess Recall Power – For purposes of Section 4 of this Agreement, the amount of excess recall power made available for export by Nalcor or one of its subsidiaries as a result of an event of Force Majeure which impacts the ability of the Partnership or LTC to make the LIL or LTA available for commercial operations as necessary to enable delivery of an average of 32 GWh of energy per month to the Island Interconnected System via the LIL and LTA over the MPG Term shall be determined by reference to NLH's most recent recall supply forecasts for use on the island.
6. Dispute Resolution – Nalcor and NLH agree that all disputes arising in connection with this Agreement shall be resolved in accordance with the procedures set out in Article 8 of the LIL Interim TFA and the LTC Interim TFA. Nalcor and NLH further agree that any dispute arising in connection with Sections 3 to 5 of this Agreement shall be a Specified Dispute (as defined in Schedule 3 to the LIL Interim TFA and the LTC Interim TFA).
7. Invoicing – Within 90 days of the end of the MPG Term, NLH shall prepare and deliver to Nalcor an invoice reflecting the calculation of the compensation, if any. Payment of the invoice by Nalcor, if any, is due within 30 days of receipt of invoice by Nalcor.
8. Governing Law - This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein. Each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that any such court is an inconvenient forum.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy in the presence of:

NALCOR ENERGY

By:

Name:

Title:

H. Stanley Marshall
President & CEO

By:

Name:

Title:

Derrick F. Sturge
Exec. VP Finance & CFO


Name: Robert Hull

Executed and delivered by Newfoundland and Labrador Hydro in the presence of:

NEWFOUNDLAND AND LABRADOR HYDRO

By:

Name:

Title:

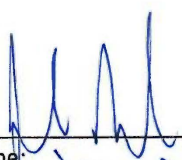
JAMES R. HAYNES
PRESIDENT

By:

Name:

Title:

GEOFF YOUNG
CORPORATE SECRETARY AND
GENERAL COUNSEL


Name: JOSH DECOSTE

Executive
Council



Newfoundland
and Labrador

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of the Committee of the Executive Council of Newfoundland and
Labrador approved by His Honour the Lieutenant-Governor on*

2013/11/29

OC2013-343

MC2013-0534. NR2013-021. TBM2013-180.

Under the authority of section 5.1 of the Electrical Power Control Act, 1994, the Lieutenant Governor in Council is pleased to direct the Board of Commissioners of Public Utilities to adopt a policy, subject to section 3, that:

1) Any expenditures, payments or compensation paid directly or indirectly by Newfoundland and Labrador Hydro, under an agreement or arrangement to which the Muskrat Falls Project Exemption Order applies, to:

- a) a LiLParty,
- b) a system operator in respect of a tariff for transmission services or ancillary services in respect of the LiL, that otherwise would have been made to a LiLParty, or
- c) Muskrat Falls Corporation, in respect of:
 - i) electrical power and energy forecasted by Muskrat Falls Corporation and Newfoundland and Labrador Hydro to be delivered to, consumed by, or stored by or on behalf of Newfoundland and Labrador Hydro for use within the province, whether or not such electrical power and energy is actually delivered, consumed, or stored within the province,
 - ii) greenhouse gas credits, transmission services and ancillary services, and
 - iii) obligations of Newfoundland and Labrador Hydro in addition to those in paragraphs (i) and (ii) to ensure the ability of Muskrat Falls Corporation and Labrador Transmission Corporation to meet their

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2013/11/29

respective obligations under financing arrangements related to the
construction and operation of Muskrat Falls and the LTA

shall be included as costs, expenses or allowances, without disallowance, reduction or alteration of those amounts, in Newfoundland and Labrador Hydro's cost of service calculation in any rate application and rate setting process, so that those costs, expenses or allowances shall be recovered in full by Newfoundland and Labrador Hydro in Island interconnected rates charged to the appropriate classes of ratepayers;

2) The costs, expenses or allowances of Newfoundland and Labrador Hydro described above, and the rates for Newfoundland and Labrador Hydro established by the Board of Commissioners pursuant to the direction under section 1, shall not be subject to subsequent review, and shall persist without disallowance, reduction or alteration of those costs, expenses or allowances or rates, throughout any processes for any public utility, including Newfoundland Power Inc., or any other process under the Electrical Power Control Act, 1994 or the Public Utilities Act;

3) Notwithstanding sections 1 and 2, no amounts paid by Newfoundland and Labrador Hydro described in those sections shall be included as costs, expenses or allowances in Newfoundland and Labrador Hydro's cost of service calculation or in any rate application or rate setting process, and no such costs, expenses or allowances shall be recovered by Newfoundland and Labrador Hydro in rates:

- a) where such amounts are directly attributable to the marketing or sale of electrical power and energy by Newfoundland and Labrador Hydro to persons located outside of the province on behalf of and for the benefit of Muskrat

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2013/11/29

- Falls Corporation and not Newfoundland and Labrador Hydro; and
- b) in any event, in respect of each of Muskrat Falls, the LTA or the LiL, until such time as the project is commissioned or nearing commissioning and Newfoundland and Labrador Hydro is receiving services from such project.
- 4) In this Order in Council, terms shall have the same meaning ascribed to them in the Muskrat Falls Project Exemption Order.

Clerk of the Executive Council

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Important Information

(Includes details about the availability of printed and electronic versions of the Statutes.)

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**NEWFOUNDLAND AND LABRADOR
REGULATION 120/13**

Muskrat Falls Project Exemption Order
under the
Electrical Power Control Act, 1994
and the
Public Utilities Act
(O.C. 2013-342)

(Filed November 29, 2013)

Under the authority of section 5.2 of the *Electrical Power Control Act, 1994* and section 4.1 of the *Public Utilities Act*, the Lieutenant-Governor in Council makes the following Order.

Dated at St. John's , November 29, 2013.

Julia Mullaley
Clerk of the Executive Council

REGULATIONS

Analysis

[1. Short title](#)

[2. Interpretation](#)

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Short title

1. This Order may be cited as the *Muskrat Falls Project Exemption Order* .

[120/13 s1](#)

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Interpretation

2. (1) In this Order

- (a) "LiL" means the transmission line and all related components of the Muskrat Falls Project described in section 2.1(1)(a)(ii) of the *Energy Corporation Act* , and for greater certainty "all related components" in that subparagraph includes converter stations, synchronous condensers, and terminal, telecommunications, and switchyard equipment;
- (b) "LilParty" means Labrador-Island Link Holding Corporation, the Labrador-Island Link General Partner Corporation, the Labrador-Island Link Limited Partnership, or Labrador-Island Link Operating Corporation, or any combination of them as the context may require;
- (c) "LTA" means the transmission facilities of the Muskrat Falls Project described in subparagraph 2.1(1)(a)(iii) of the *Energy Corporation Act* ;
- (d) "LTACo" means the Labrador Transmission Corporation;
- (e) "MFCo" means the Muskrat Falls Corporation;
- (f) "Muskrat Falls " means the hydroelectric facilities of the Muskrat Falls Project as described in subparagraph 2.1(1)(a)(i) of the *Energy Corporation Act* .

(2) In this Order, references

- (a) to a public utility or an activity being "exempt" means the public utility or the activity is exempt from the application of
 - (i) the *Public Utilities Act*, and
 - (ii) Part II of the *Electrical Power Control Act, 1994* ; and
- (b) to a corporation or limited partnership, where the corporation or limited partnership does not exist as of the date of this Order coming into force, shall be valid upon the creation of the corporation or limited partnership under the *Energy Corporation Act* and the *Corporations Act* or the *Limited Partnership Act* .

[120/13 s2](#)

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Public utilities

3. LilParty, LTACo and MFCo are acknowledged to be public utilities under the *Public Utilities Act* for the purpose of this Order.

[120/13 s3](#)

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Exemption

4. (1) Newfoundland and Labrador Hydro is exempt in respect of

- (a) any
 - (i) expenditures, payments, or compensation paid to MFCo by Newfoundland and Labrador Hydro relating to the purchase and storage of electrical power and energy,

the purchase of interconnection facilities, ancillary services, and greenhouse gas credits,

(ii) obligations of Newfoundland and Labrador Hydro in addition to subparagraph (i) to ensure MFCo's and LTACo's ability to meet their respective obligations under financing arrangements related to the construction and operation of Muskrat Falls and the LTA, and

(iii) expenditures, payments, or compensation paid to MFCo and revenues, proceeds or income received by Newfoundland and Labrador Hydro relating to the sale of electrical power and energy acquired from MFCo to persons located outside of the province

whether under one or more power purchase agreements or otherwise;

(b) any activity relating to the receipt of delivery, use, storage or enjoyment by Newfoundland and Labrador Hydro of any electrical power and energy, interconnection facilities, ancillary services, and greenhouse gas credits under paragraph (a);

(c) any expenditures, payments, or compensation paid to LilParty and claimed as costs, expenses or allowances by Newfoundland and Labrador Hydro relating to the design, engineering, construction and commissioning of transmission assets and the purchase of transmission services and ancillary services, electrical power and energy, from LilParty or otherwise with respect to the LiL, under one or more transmission services agreements, transmission funding agreements, or otherwise; and

(d) any activity relating to the receipt of delivery, use, storage or enjoyment by Newfoundland and Labrador Hydro of any transmission services and ancillary services, electrical power and energy, with respect to the LiL under paragraph (c).

(2) MFCo is exempt in respect of any activity, and any expenditures, payments or compensation, or any revenues, proceeds or income, relating to the following:

(a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of Muskrat Falls ;

(b) producing, generating, storing, transmitting, delivering or providing electric power and energy, capacity, ancillary services, and greenhouse gas credits, to or for Newfoundland and Labrador Hydro or any other person or corporation for compensation;

(c) any activity required or related to an agreement under section 5.4 or 5.5 of the *Electrical Power Control Act, 1994* ;

(d) negotiating, concluding, executing and performing any and all agreements for any activity referred to in paragraph (a), (b) or (c);

(e) raising and securing financing necessary to conduct any activity in paragraph (a), (b), (c) or (d), including without limitation the negotiation, conclusion, execution and performance of any and all agreements and security documentation with any lender providing that financing; and

(f) any agreements, contracts or instruments necessary or incidental to any activity described in this exemption, including agreements with LTACo.

(3) LilParty is exempt in respect of any activity, and any expenditures, payments or compensation, or any revenues, proceeds or income, relating to the following:

- (a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of the LiL;
 - (b) producing, generating, storing, transmitting, delivering or providing electric power and energy to or for Newfoundland and Labrador Hydro or any other person or corporation for compensation;
 - (c) negotiating, concluding, executing and performing any and all agreements for activities referred to in paragraph (a) or (b);
 - (d) raising and securing any financing necessary to conduct any activity in paragraph (a), (b) or (c), including without limitation the negotiation, conclusion, execution and performance of any and all agreements and security documentation with any lender providing that financing; and
 - (e) any agreements, contracts or instruments necessary or incidental to any activity described in this exemption, including agreements between one or more LilParty.
- (4) LTACo is exempt in respect of any activity, and any expenditures, payments or compensation, or any revenues, proceeds or income, relating to the following:
- (a) the design, engineering, planning, construction, commissioning, ownership, operation, maintenance, management and control of the LTA;
 - (b) producing, generating, storing, transmitting, delivering or providing electric power and energy to or for Newfoundland and Labrador Hydro or any other person or corporation for compensation;
 - (c) negotiating, concluding, executing and performing any and all agreements for activities referred to in paragraphs (a) and (b);
 - (d) raising and securing any financing necessary to construct the LTA, including without limitation the negotiation, conclusion, execution and performance of any and all agreements and security documentation with any lender providing that financing to the projects; and
 - (e) any agreements, contracts or instruments necessary or incidental to any activity described in this exemption, including agreements with MFCo.

[120/13 s4](#)