

1 Q. Please provide copies of agreements relating to the Muskrat Falls Project that relate
2 to the sharing of staff, funds and resources among the companies in the Nalcor
3 Group.

4

5

6 A. Please refer to PUB-Nalcor-047, Attachment 1; PUB-Nalcor-047, Attachment 2;
7 PUB-Nalcor-047, Attachment 3; and PUB-Nalcor-047, Attachment 4 for copies of
8 agreements relating to the Muskrat Falls Project (Project) that relate to the sharing
9 of staff, funds, and resources among the companies in the Nalcor Group. In addition
10 to the attached agreements, a Master Service Agreement between Nalcor and MFC
11 will also be required and is expected to be executed by June 30, 2019.

12

13 Please also refer to PUB-Nalcor-047, Attachment 5 for a copy of the Intercompany
14 Transactions Costing Guidelines (Guidelines) that outline the process for charging
15 costs across the lines of business within Nalcor. The Guidelines are currently utilized
16 between Nalcor and subsidiaries for various affiliated transactions including
17 management, general accounting, treasury, purchasing, legal, human resources,
18 safety and health, engineering services, administration supply chain, and
19 information systems. The commercial arrangements between Nalcor, Hydro and
20 CF(L)Co related to the Project utilize many principles contained within the
21 Guidelines, but contain certain provisions for the sharing of staff, funds and
22 resources unique to the Project and its related contractual arrangements. It is
23 expected that the Guidelines will be reviewed in 2019 to determine if any changes
24 are required resulting from Project related agreements.

LABRADOR-ISLAND LINK LIMITED PARTNERSHIP

and

LABRADOR-ISLAND LINK OPERATING CORPORATION

and

NALCOR ENERGY

**LABRADOR-ISLAND LINK
MASTER SERVICES AGREEMENT**

July 4, 2018

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- Schedule 2 - Operating and Maintenance Services
- Schedule 3 - Business Support and Technical Services
- Schedule 4 - Dispute Resolution Procedure
- Schedule 5 - Confidential Information

**LABRADOR-ISLAND LINK
MASTER SERVICES AGREEMENT**

THIS LIL MASTER SERVICES AGREEMENT is made effective the 4th day of July, 2018 (the “**Effective Date**”)

B E T W E E N :

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

- and -

LABRADOR-ISLAND LINK OPERATING CORPORATION, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor (“**Opco**”)

- and -

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**” or “**Contractor**”)

WHEREAS:

- A. The Partnership and Opco wish to arrange for Services and for the delivery of such Services, as detailed in the descriptions set forth in **Schedules 2** and **3** of this Agreement; and
- B. The Contractor wishes to provide such Services in consideration of the compensation provided for by this Agreement;

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 and, subject to **Section 1.2(h)**, in the Schedules:

“**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 modified, amended, supplemented or restated from time to time 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;

“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;

“Canada” mean Her Majesty the Queen in Right of Canada;

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

“Claiming Party” has the meaning set forth in **Section 17.2(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;

“Collateral Agent” has the meaning given to such term in the LIL Master Definitions Agreement;

“Confidential Information” means, with respect to the LIL:

- (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;

“Contractor” has the meaning set forth in the preamble to this Agreement and includes Contractor’s successors and permitted assigns;

“Contractor Default” has the meaning set forth in **Section 11.5**;

“Contractor Group” has the meaning set forth in **Section 12.1**;

“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 will 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);

“Deliverable” means any tangible or intangible document, software or material which is, or is to be, produced, created, provided, delivered or made available by Contractor to LIL Party, including any specifications, technical information, plans, data, computer code, reports, manuals, or other documents;

“Direct Claim” has the meaning set forth in **Section 12.4(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to the other Party or an Affiliate of the 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 17.1(a)**;

“**Effective Date**” has the meaning set forth in the commencement of this Agreement;

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

“**Financing Parties**” means Canada and the Collateral Agent and “**Financing Party**” means either one of them;

“**First Party**” has the meaning set forth in **Section 6.2**;

“**Force Majeure**” means an event, condition or circumstance 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 hereunder. 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 LIL or any machinery or equipment comprising part of or used in connection with the LIL;
- (e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the Services, 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; and
- (f) any event or circumstance affecting a Subcontractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that the

Subcontractor is relieved from the performance of its obligations under the applicable Subcontract,

provided that:

- (i) the effect of such event of Force Majeure must continue for a period of not less than one day;
- (ii) lack of finances or changes in economic circumstances of a Party will not be considered an event of Force Majeure; and
- (iii) any delay in the settlement of any Dispute will not be considered an event of Force Majeure;

“**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 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 will be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice will not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather will 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;

“**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);

“**Indemnified Party**” has the meaning set forth in **Section 12.4(a)**;

“**Indemnitor**” has the meaning set forth in **Section 12.4(a)**;

"Independent Engineer" means Argirov Engineering Inc. and any successor thereof and any other engineering consultants appointed from time to time for the LIL, with the consent of the Partnership, by the Collateral Agent or any other person to advise the Financing Parties in replacement thereof, it being understood that only one engineering or consulting firm can occupy this role at any one time;

"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;

“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 either 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 Assets Agreement” means the LIL Assets Agreement dated November 29, 2013 between the Partnership and Opco relating to the possession and use of the LIL by Opco;

“LIL Agreements” means those agreements related to the LIL as provided at **Schedule 1**;

“LIL Group” has the meaning set forth in **Section 12.2**;

“LIL Lease” means the LIL Lease dated November 29, 2013 among the Partnership, Opco and NLH relating to the lease of the Labrador-Island Link by the Partnership to Opco;

“LIL Lease Term” has the meaning set forth in the LIL Lease;

“LIL Master Definitions Agreement” means the second amended and restated master definitions agreement dated as of May 10, 2017 among the Collateral Agent, the Partnership, BNY Trust Company of Canada, as issuer trustee of the Labrador-Island Link Funding Trust, the LIL Security Trustee, BNY Trust Company of Canada, as intermediary trustee of the LIL Construction Project Trust, Nalcor, Labrador-Island Link Holding Corporation, Canada, Opco and the Labrador-Island Link General Partner Corporation, as same may be further amended, restated, supplemented or otherwise modified or replaced from time to time;

“LIL Party” means the Partnership or Opco or both, as construed in accordance with **Section 1.6**;

“LIL Project Finance Agreement” means the second amended and restated LIL project financing agreement dated as of May 10, 2017 among the Collateral Agent, the Partnership, as borrower, BNY Trust Company of Canada, as intermediary trustee of the LIL Construction

Project Trust, as lender and Opco and the Labrador-Island Link General Partner Corporation, as credit parties, as same may be further amended, restated, supplemented or otherwise modified or replaced from time to time;

“LIL Project Finance Documents” has the meaning given to such term in the LIL Master Definitions Agreement;

“LIL Security Trustee” means Computershare Trust Company of Canada, a trust company, in its capacity as security trustee under certain security agreements and instruments issued and delivered pursuant to the LIL Project Finance Agreement;

“LTA” means the equipment and transmission facilities being constructed by or on behalf of Labrador Transmission Corporation in Labrador including its interconnections with each of the hydro-generation plants at each of Muskrat Falls and Churchill Falls and the LIL;

“Labrador-Island Link” or **“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;

“Lease Effective Date” means the “Effective Date” of the LIL Lease, as set forth in the LIL Lease;

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

“Marketing Personnel” means a natural Person who, individually or on behalf of any other Person, sells or purchases for consumption or resale capacity, energy, energy derivatives and ancillary services in the wholesale power markets, and includes any natural Person who conducts such transactions on behalf of transmission service customers, power exchanges, transmission owners that are not also a system operator, load serving entities, loads, holders of energy derivatives, generators and other power suppliers and their designated agents;

“NL” means the Province of Newfoundland and Labrador;

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

“**NLH**” means Newfoundland and Labrador Hydro, a corporation incorporated under the laws of NL, and includes its successors;

“**Nalcor**” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“**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 either Party to the other under this Agreement, which communication shall be given in accordance with **Section 18.1**;

“**O&M Activities**” means all activities and undertakings performed by or on behalf of LIL Party that are required (considering the remaining LIL Service Life) to operate, maintain and sustain the LIL;

“**Opco**” has the meaning set forth in the preamble to this Agreement and includes Opco’s successors and permitted assigns;

“**Opco Default**” has the meaning set forth in **Section 11.3**;

“**Overhead Burden**” means costs incurred in support of business activities, detailed in Schedule 3 – Business Support and Technical Services, including, without limitation:

- (a) indirect labour and associated benefits in service areas such as administration, general accounting, treasury, tax, human resources, payroll, information systems, research, corporate planning and economics, legal counsel, corporate management, risk management, internal audit, health and safety, office services and other similar functions;
- (b) support service costs such as head office lease payments, leasehold improvements, depreciation charges, heat and light, insurance, property tax and maintenance and similar costs associated with operation and maintenance of support facilities, systems and equipment; and
- (c) payroll allowances and burdens such as:
 - (i) government mandated payroll costs which may include, without limitation, Canada pension plan, employment insurance, workers’ compensation, health and post-secondary education tax; and

- (ii) costs associated with established benefit plans which are made available to all employees on a regular basis and are not imposed by an Authorized Authority. Such benefit plans may include, without limitation, the following:
 - (A) employee insurances including life, accidental death and dismemberment, medical and dental;
 - (B) company pension; and
 - (C) leaves including training, short and long term sick leave, ease back, medical travel and appointments and annual leave;

“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 the Partnership’s successors and permitted assigns;

“Partnership Default” has the meaning set forth in **Section 11.1**;

“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;

“Power Supply Policies” mean the policies, procedures, processes and controls established by Nalcor and/or its power supply division, including those relating to intercompany transaction costing, that would be applicable to the provision of Services under this Agreement, as may be amended from time to time, provided that any such policies, procedures, processes and controls and any amendment thereto does not derogate from or change the principle of cost based recovery or otherwise include or introduce a profit component;

“PUB” means the Board of Commissioner of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador), or any successor performing substantially the same functions;

“Recipient Party” has the meaning set forth in **Section 17.2(a)**;

“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;

“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 and Affiliates of a Party;

“Services” means:

- (a) the services described in **Schedules 2 and 3** as may be amended from time to time; and
- (b) the services and Deliverables that are required to complete O&M Activities of the Partnership and Opco;

under, and in accordance with the provisions of, the agreements listed at **Schedule 1**;

“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;

“Subcontract” means an agreement (including any supplement or amendment) entered into between Contractor and any Person in the manner and to the extent permitted under the terms of this Agreement by which Contractor engages such Person to perform any part of the Services;

“Subcontractor” means any Person engaged by Contractor to perform any part of the Services pursuant to a Subcontract, and will include the successors and permitted assigns of any such Person;

“Supporting Material” has the meaning set forth in **Section 5.1(b)**;

“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 transmission 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;

“Term” has the meaning set forth in **Section 10.1**;

“Third Party Claim” has the meaning set forth in **Section 12.4(b)**;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

“**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; and

“**Warehouse Costs**” means the cost associated with operating Contractor or Contractor Affiliate warehouses used to provide care, custody, control and supply of materials, tools, supply, consumables, and/or equipment required in the performance of the Services; and

“**Work Authorization**” means an authorization or similar work order providing instructions to Contractor to execute a scope of work in respect of Services as is further defined in **Section 2.5**.

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 will 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. All references to a given agreement, instrument or other document will be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it will 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 will be done in accordance with Canadian GAAP, except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, each Party shall use commercially reasonable efforts to provide the other Party with all of the information it needs to prepare its accounting records in accordance with Canadian GAAP.

- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) 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 date of this Agreement, will 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 will include, and will 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 will 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 will, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto 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 will 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 will 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 will 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 will 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 will 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 will prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement will 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 17**, the Parties irrevocably consent and submit 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 Schedules

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

Schedule 1	-	LIL Agreements
Schedule 2	-	Operating and Maintenance Services
Schedule 3	-	Business Support and Technical Services
Schedule 4	-	Dispute Resolution Procedure
Schedule 5	-	Confidential Information

1.6 Identity of LIL Party

In this Agreement, "**LIL Party**" means: (a) the Partnership, with respect to Services (and all associated rights and obligations) that are to be provided prior to the Lease Effective Date;

or (b) Opco, with respect to Services (and all associated rights and obligations) that are to be provided on or after the Lease Effective Date; or (c) both the Partnership and Opco, if required by the context. As between the Partnership and Opco, if any other agreement to which they are parties provides that the obligations referred to above should be allocated on a different basis, the Partnership and Opco reserve their respective rights to seek redress thereunder.

ARTICLE 2
PROVISION OF SERVICES

2.1 Contractor Obligations

Contractor shall provide the Services to LIL Party in accordance with the terms of this Agreement, each Work Authorization issued under this Agreement and the applicable provisions of the LIL Agreements and, in particular, Contractor shall:

- (a) maintain the standards of health, safety, environmental protection and loss prevention in accordance with all Applicable Laws and all health, safety and environmental standards, regulations and guidelines of all applicable Authorized Authorities;
- (b) ensure that its personnel and the personnel of any Subcontractors performing the Services have received safety, accident and loss prevention orientation and training as it relates to the performance of the Services. Contractor shall require of its personnel, agents and Subcontractors that they, and as applicable, their employees, strictly obey all safety and environmental orders, government safety and environmental regulations and guidelines and instructions issued by LIL Party;
- (c) ensure that the Services are provided in accordance with Good Utility Practice, comply with all applicable Reliability Standards, and conform to the quality and description stated in each Work Authorization issued under this Agreement (which Work Authorizations must respect the applicable requirements of the LIL Agreements) and follow, during any applicable manufacturers' warranty period, such manufacturers' maintenance and operating instructions;
- (d) comply, on a timely basis, with all requirements of LIL Party to provide Services consistent with the provisions of this Agreement and the LIL Agreements and all Applicable Laws in effect or that may come into effect during the Term;
- (e) provide all necessary qualified personnel to perform its obligations under this Agreement;
- (f) provide all necessary support services required to perform the Services, including without limitation, system hardware and software, administrative services and office space and related support;

- (g) obtain and maintain all directions, guidelines, permits, certificates, authorizations, dispensations and licenses of any type whatsoever necessary for the performance of its obligations under this Agreement; and
- (h) rectify any and all deficiencies in its performance of the Services identified, discovered or noted by LIL Party or any Authorized Authority.

2.2 LIL Party Obligations

LIL Party acknowledges and agrees that it shall provide Contractor with all information and documents within its care and control necessary for Contractor to fulfill its obligations under **Section 2.1**, including agreements, operation and maintenance instructions and manuals, punch lists, drawings, environmental permits and licenses.

2.3 Confirmation of Services to be Provided

Contractor acknowledges that it will review and verify the details contained in any Work Authorization issued under this Agreement and Contractor shall advise LIL Party of any errors, omissions and inconsistencies in the Work Authorization prior to commencement of work thereunder and shall not proceed with any part of the Services affected by such until resolved by LIL Party.

2.4 Representations and Warranties regarding Performance

Contractor represents and warrants that:

- (a) it has the required skills, experience, facilities, equipment and capacity to perform the Services in a timely manner and in accordance with this Agreement and the LIL Agreements;
- (b) it has knowledge of all of the requirements of Applicable Laws and business practices that must be followed in performing the Services; and
- (c) it shall perform the Services with all due diligence and in a manner consistent with the standards in the industry for such services, ensuring compliance with the applicable requirements of the LIL Agreements.

Contractor covenants that the representations and warranties set forth in this **Section 2.4** will remain accurate and in force and effect throughout the Term.

2.5 Work Authorizations

- (a) Effect and Contents - Contractor will prepare and maintain Work Authorizations in accordance with Power Supply Policies for LIL Party approval covering Services or as otherwise mutually agreed and outlined in the Work Authorization. LIL Party approved Work Authorizations will be issued to Contractor as authorization to proceed with the Services. Each Work Authorization will be effective when signed by authorized representatives of LIL Party and Contractor and will set forth, as

applicable, scope and specifications, fee arrangements, payment schedule, various activities and tasks to be performed, acceptance criteria, a schedule of estimated completion dates and roles and responsibilities of the Parties. Each duly signed Work Authorization is incorporated into and forms part of this Agreement (“**Work Authorization**”).

- (b) Order of Precedence - To the extent there are any conflicts or inconsistencies between the provisions of this Agreement and any Work Authorization, the provisions of this Agreement will take precedence and govern, unless otherwise expressly stated in the Work Authorization.

2.6 Contractor’s Responsibilities

Except as otherwise expressly set out in the applicable Work Authorization, Contractor shall provide, administer, manage, support, maintain and pay for applicable resources (including personnel, hardware, software, facilities, services and other items, however described) necessary or appropriate for Contractor to provide, perform or deliver the Services or customarily provided as part of services similar to the Services.

2.7 Reports by Contractor

- (a) Status Reports – if requested by LIL Party, Contractor shall provide LIL Party with reports on the status of the Services in the form reasonably requested by LIL Party.
- (b) Reports of Non-Compliance - Contractor must promptly provide Notice to LIL Party and any Financing Party entitled to receive such Notice in accordance with the requirements of the LIL Agreements, as applicable, if Contractor becomes aware that it is not developing, providing, performing or delivering Services in accordance with the terms, conditions, methodologies, warranties, specifications or timelines required by this Agreement, any of the provisions of the LIL Agreements or a Work Authorization, or if Contractor anticipates that this is likely to occur. Such Notice must provide the particulars of the non-compliance or anticipated non-compliance along with the steps Contractor proposes to take to address or prevent the non-compliance or to mitigate the consequences thereof.

2.8 LIL Party Approvals

Any Approval by LIL Party of any Services or any participation by LIL Party in any Services provided by Contractor will in no way mitigate, reduce, or otherwise limit Contractor’s obligations hereunder.

2.9 Representatives of the Parties

- (a) Contractor’s Representative - Contractor shall appoint by Notice to LIL Party a representative who will be responsible for the Services, and who is empowered to make decisions on behalf of Contractor and authorized to maintain liaison with LIL Party.

- (b) LIL Party's Representative - LIL Party shall appoint by Notice to Contractor a representative who is empowered to make decisions on behalf of LIL Party and authorized to maintain liaison with Contractor.

2.10 Cancellation of Services

- (a) Notice of Cancellation - LIL Party reserves the right upon Notice to Contractor to cancel any of the Services hereunder, or any part or component thereof, effective as of the date specified in such Notice, or as otherwise agreed by the Parties. Upon receipt of a cancellation Notice, Contractor shall make commercially reasonable efforts to effect such cancellation promptly and minimize further costs, and shall promptly deliver to LIL Party completed or partially-completed Deliverables, work-in-process and LIL Party Confidential Information in accordance with the cancellation Notice.
- (b) Payment on Cancellation - In respect of Services cancelled pursuant to **Section 2.10(a)**, LIL Party shall pay:
 - (i) all related fees and expenses properly incurred by Contractor prior to cancellation of the Services; and
 - (ii) reasonable fees and expenses related to future commitments Contractor has made to third parties, including Subcontractors, related to the cancelled Services that Contractor cannot terminate,provided that in either case those fees and expenses were properly incurred in accordance with this Agreement or specifically pre-authorized in writing by LIL Party.
- (c) Effect of Cancellation - Cancellation or termination of Services will not automatically terminate this Agreement.

ARTICLE 3 NALCOR STATUS AND SUBCONTRACTING

3.1 Contractor Status

- (a) In the provision of Services, Contractor shall operate as an independent contractor. In the provision of Services, nothing in this Agreement or any Work Authorization will be construed to constitute Contractor as an agent, servant, employee or subcontractor of LIL Party and Contractor shall not represent or hold itself out as an agent of LIL Party or an agent of any Affiliate of LIL Party.
- (b) Contractor's personnel and Subcontractors will be under the direct supervision and control of Contractor and not of LIL Party. Contractor accepts complete responsibility as the principal for Contractor's personnel and Subcontractors.

- (c) Without limiting **Article 12**, Contractor shall indemnify and hold LIL Party harmless from all costs and expenses arising out of any claim or liability by reason that Contractor is considered an agent, servant, employee or subcontractor of LIL Party up to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such claims or liability. Notwithstanding the foregoing, where Contractor is considered an agent, servant, employee, subcontractor or Affiliate of LIL Party, recovery by LIL Party against such Contractor in connection with any such claim or liability by reason of Contractor's gross negligence, willful misconduct or fraud shall not be limited to the maximum amount of \$10,000.00.

3.2 Subcontracting

- (a) Subcontractors - Contractor may provide the Services itself or it may engage suitably qualified Subcontractors to provide some or all of the Services. The Contractor shall provide LIL Party with 10 days' notice of each Subcontractor it intends to engage for the purpose of providing Services should such contract for Services be material. LIL Party reserves the right to disapprove of the use of any Subcontractor providing such material Services by providing written notice of such disapproval within 10 days of receipt of notice from Contractor. Notwithstanding the foregoing, LIL Party acknowledges and agrees that Contractor may utilize personnel employed by, or otherwise associated with, Contractor's Affiliates in the performance of the Services in which case no notice shall be required. Contractor warrants to LIL Party that all Services performed by Subcontractors, whether third parties or Affiliates of Contractor, will be performed in accordance with the requirements of this Agreement (including, without limitation, the requirement that the Services are provided in accordance with Good Utility Practice) and any applicable requirements of the LIL Agreements. Contractor will remain responsible for all aspects of the Services, including the quality of the Services performed by Subcontractors. Contractor shall oversee the performance of all Subcontractors and keep such records and accounts and furnish such reports and information relative to Subcontractors as LIL Party may reasonably request.
- (b) General Standards of Subcontracts - Contractor shall ensure that all Subcontracts are consistent with the provisions of this Agreement (including, without limitation, the requirement that the Services are provided in accordance with Good Utility Practice) any Work Authorizations issued under this Agreement and with the rights of LIL Party and the obligations of Contractor under this Agreement. Contractor shall preserve and protect the rights of LIL Party under this Agreement with respect to the Services to be performed by any Subcontractors so that the subcontracting thereof will not prejudice such rights.
- (c) Subcontracts not to Bind LIL Party/Specific Contents - No Subcontract will bind or purport to bind LIL Party. All Subcontracts will contain:

- (i) a clear statement that Contractor is entering into such Subcontracts as principal and not as agent for any other Person;
 - (ii) a provision permitting the assignment of any material Subcontract by Contractor to LIL Party; and
 - (iii) to the extent that the Subcontractor is an Affiliate of Nalcor, compensation provisions that comply with the provisions of **Section 4.1**.
- (d) Responsibility of Contractor - Contractor will remain liable and obligated to LIL Party for the timely and proper performance of all of its obligations hereunder, even if such obligations are delegated to one or more Subcontractors. Contractor will also be liable hereunder for any action or inaction of any Subcontractor in connection with this Agreement as if such action or inaction was that of Contractor.
- (e) Replacement - In the event that LIL Party determines, in its sole discretion and for reasons that are not unlawful, that the continued engagement by Contractor of any Subcontractor or Subcontractor personnel is not in the best interests of LIL Party, LIL Party may request the termination of such Subcontractor or Subcontractor personnel and Contractor shall (i) immediately remove such Subcontractor or Subcontractor personnel from working on the Services, and (ii) expeditiously provide a suitably qualified replacement.

ARTICLE 4

COMPENSATION

4.1 Compensation

Compensation is based on the principle of actual cost recovery, with no profit element included for the Contractor and the Subcontractors that are Affiliates of the Contractor. Subcontractors that are not Affiliates of the Contractor shall be selected pursuant to the Power Supply Policies. Compensation for those Subcontractors shall be in accordance with the terms and conditions of contracts awarded to those Subcontractors by Contractor. LIL Party shall reimburse the Contractor for all LIL Party approved expenses and costs expended by the Contractor in providing the Services, provided that all such expenses and costs are reasonable and necessarily expended. For the delivery of Services under this Agreement, LIL Party shall pay compensation in accordance with the following:

- (a) For the provision of Contractor or Contractor Affiliate supplied labour, materials, tools, supply, consumables, and/or equipment used in the performance of the Services required in accordance with this Agreement, an amount equal to actual cost without profit element, including a reasonable allocation of Warehouse Costs and Overhead Burden determined in accordance with Power Supply Policies.
- (b) For the provision of Subcontractor supplied labour, materials, tools, supply, consumables, and/or equipment, required for the performance of the Services in accordance with this Agreement, whether that of a third party or a Contractor

Affiliate, reasonable and necessary documented costs of such labour, materials, tools, supply, consumables, and/or equipment invoiced by the Subcontractor to the Contractor and attested and approved by Contractor as valid and correct charges.

- (c) Any amounts, fees, administration expenses, Warehouse Costs or Overhead Burden invoiced to LIL Party shall reflect actual use of resources and inputs without any profit element (other than for a Subcontractor which is not a Contractor Affiliate) and if based on estimates approved by LIL Party shall be reconciled and adjusted periodically, but no less frequently than annually, to reflect invoicing and payment of actual and reasonable cost associated with respect to such amounts, fees, administration expenses, Warehouse Costs or Overhead Burden.
- (d) Any other request for compensation by Contractor shall require LIL Party approval prior to being eligible for reimbursement.

ARTICLE 5 INVOICING AND PAYMENT

5.1 Invoicing and Payment

- (a) Contractor shall submit monthly invoices, in a format acceptable to LIL Party, for expenditures chargeable to LIL Party and associated with the performance of Services in the preceding month. Invoices shall be detailed in accordance with the LIL Party's code of accounts as established from time to time or other details as reasonably requested by LIL Party.
- (b) Invoices will be accompanied by all relevant supporting documentation as the LIL Party may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced, along with a summary sheet cross referenced to all supporting documentation ("**Supporting Material**"). LIL Party shall not be responsible or liable for any Claim arising from delays in payment due to Contractor not providing complete Supporting Material, satisfactory to LIL Party.
- (c) LIL Party shall have no obligation to pay Contractor for performance of Services, which have not been authorized by LIL Party pursuant to a Work Authorization or otherwise in accordance with this Agreement.
- (d) LIL Party shall pay all invoices within 30 days after receipt thereof, except that if LIL Party disputes any item invoiced. LIL Party shall notify Contractor of any item disputed and specifying the reason therefor. Payment of the disputed item shall be withheld until settlement of the dispute and payment shall be made on the undisputed portion of the invoice.
- (e) Any dispute concerning the amount of any payment(s) including, without limitation, any dispute regarding LIL Party's right under this Agreement or otherwise to offset

any claim it may have, shall not relieve Contractor of its obligation to proceed with all due diligence to provide the Services to be performed under this Agreement.

- (f) The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after Contractor's receipt of a notification of disputed amounts. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, LIL Party shall pay any amount determined to be owing to Contractor in accordance with this **Article 5**.
- (g) LIL Party shall be entitled to withhold payment, setoff or deduct from Contractor's payments, to the extent necessary to protect LIL Party in respect of:
 - (i) invoiced amounts reasonably disputed by LIL Party;
 - (ii) failure of Contractor to make payments promptly when due to Subcontractors, Authorities and its agents;
 - (iii) failure of Contractor to remit or pay any Tax or make any other payment required under Applicable Laws where LIL Party, acting reasonably, determines that any such remittance or payment may be assessed against the LIL Party;
 - (iv) defective Services not repaired, replaced or corrected;
 - (v) liens or claims filed, or reasonable evidence indicating to LIL Party the probability of claims or liens being filed, with respect to the Services;
 - (vi) any indebtedness of Contractor to LIL Party; and
 - (vii) any amount as permitted or required by Applicable Laws.
- (h) Payments to Contractor by LIL Party will be made by electronic transfer or other mutually agreed method to an account designated by Contractor. Contractor shall provide LIL Party with the necessary banking information to facilitate electronic transfer of funds to Contractor's designated bank account. Any changes in Contractor's banking information or payment instructions shall be submitted in accordance with **Article 18.1**. LIL Party shall not be held liable or responsible for errors or delays resulting from incorrect or delayed submission of changes in banking instructions.

5.2 **HST**

- (a) In the absence of a valid election pursuant to s. 156 of the Excise Tax Act, LIL Party shall pay the Contractor HST, in accordance with the Excise Tax Act.

- (b) The Contractor shall provide, at all times when any HST is required to be collected, such documents and particulars relating to the supply as may be required by LIL Party to substantiate a claim for any input tax credits as may be permitted pursuant to the Excise Tax Act. Without limiting the foregoing, the Contractor, as required, shall include on all invoices issued, pursuant to this **Article 5**, all of the following particulars:
 - (i) its HST registration number;
 - (ii) the subtotal of all taxable supplies;
 - (iii) the applicable HST rate(s) and the amount of HST charged on such taxable supplies; and
 - (iv) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.
- (c) For the purposes of this Agreement, an amount shall not be included in a reimbursable amount to the extent that it is a Tax that is refundable or otherwise recoverable (including HST).

ARTICLE 6
TAXES

6.1 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. Nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.
- (b) HST - 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 will be applicable, such Taxes will be in addition to all such amounts and will 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 will 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 5.2(b)**; 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 co-operate with such other Party to assist it in claiming, such input tax credit.
- (c) Changes in Taxes - Any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (d) Income Taxes and HST - For greater certainty:
- (i) the Partnership is solely responsible for the payment of income taxes and HST payable by the Partnership; and
 - (ii) Opco is solely responsible for the payment of income taxes and HST payable by Opco.
 - (iii) Contractor is solely responsible for the payment of income taxes and HST payable by Contractor.

6.2 Tax Indemnity

Each Party (in this **Section 6.2** 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 this **Article 6** 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 6.1(b)**, each Party will be liable for and defend, protect, release, indemnify and hold each other Party harmless from and against:

- (a) any and all Taxes imposed by any Authorized Authority on the other Parties in respect of this Agreement, and any and all Claims including payment of Taxes that may be brought against or suffered by the other Parties or that the other Parties 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) that may

be brought against or suffered by the other Parties or that the other Parties 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.

ARTICLE 7
INFORMATION, ACCESS AND REPORTING

7.1 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 will be maintained in accordance with Good Utility Practice and Canadian GAAP and as required by Applicable Law and the applicable provisions of the LIL Agreements. Records containing information reasonably contemplated to be useful throughout the Term, including major maintenance records, life cycle management records and design and commissioning records, will be maintained for the Term; all other documents will be retained for at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Party, and in accordance with the requirements of the LIL Agreements, as applicable, the Financing Parties and the Independent Engineer, 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 Party, the Financing Parties or the Independent Engineer, as applicable, to comply with its obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement and the applicable provisions of the LIL Agreements. Either Party, and in accordance with the requirements of the LIL Agreements, the Financing Parties or the Independent Engineer, as applicable, 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 any confidentiality requirements. Each Party will 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.

7.2 Access and Information

LIL Party and Contractor, and in accordance with the requirements of the LIL Agreements, as applicable, any of the Financing Parties and the Independent Engineer will each have the right, from the Effective Date through to the end of the Term, upon reasonable advance Notice to the other Party or Parties, as applicable, to access all LIL sites and any other sites at which the Services are performed at all reasonable times for the sole purpose of examining the LIL or the conduct of the Services in connection with the performance of the respective obligations of the Parties under this Agreement and the applicable provisions of the LIL Agreements, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access will not unreasonably interfere with the activities at the LIL and will not compromise the safety of persons or property. While accessing the LIL, all Representatives of the Parties or any of the Financing Parties or the Independent Engineer shall follow all rules and procedures established by Party owning such facilities 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 LIL Party or any of the Financing

Parties or the Independent Engineer will not relieve the Contractor of any of its obligations under this Agreement. No default will be waived or deemed to have been waived solely by any inspection by or on behalf of a Party or any of the Financing Parties or the Independent Engineer. In no event will any inspection by a Party hereunder or by any of the Financing Parties or the Independent Engineer be a representation that there has been or will be compliance with this Agreement, the applicable provisions of the LIL Agreements and Applicable Law.

7.3 Restriction

In no circumstances will Contractor permit Marketing Personnel to have access to any of the information or facilities referred to in **Section 7.1** or **7.2** without the prior written consent of the affected Party; provided however that this restriction does not apply to publicly-available information.

**ARTICLE 8
FORCE MAJEURE**

8.1 Force Majeure

Other than an obligation to pay or spend money, 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 9
INSURANCE**

9.1 Partnership Insurance Obligations

The Partnership covenants to Contractor that it shall comply with all obligations imposed on it to insure, as set forth in the LIL Agreements including Article 5 of the LIL Assets Agreement.

9.2 Opco Insurance Obligations

Opco covenants to Contractor that it shall comply with all obligations imposed on it to insure, as set forth in the LIL Agreements including Article 9 of the LIL Lease.

9.3 Workers' Compensation

Contractor shall pay all assessments due under the *Workplace Health, Safety and Compensation Act* (NL). At the beginning of each calendar year, Contractor shall obtain and deliver to LIL Party a certificate or certificates establishing that it is in good standing with the Workplace Health, Safety and Compensation Commission of NL.

9.4 Liability Insurance

Contractor shall procure and maintain commercial general liability insurance including sudden and accidental pollution coverage. The insurance policy shall have a limit of not less than \$5,000,000.00 for any one occurrence to cover property damage or loss, bodily injury and loss of life arising directly or indirectly from the provision of Services by Contractor. Any such policy shall include LIL Parties as an insured.

9.5 Automobile Insurance

Contractor shall procure and maintain automobile liability insurance. The insurance policy shall have a limit of not less than \$5,000,000.00 for any one occurrence to cover property damage or loss, bodily injury and loss of life arising from the operation of owned or non-owned automobiles or mobile equipment resulting directly or indirectly from the provision of Services by Contractor.

9.6 Failure to Maintain Insurance/Deductibles

All specified insurance coverage shall be maintained by Contractor in full force for the term of this Agreement. Contractor will be responsible for payment of all deductibles applicable to all insurance policies specified in **Sections 9.4** and **9.5**. LIL Party shall reimburse Contractor for such deductibles.

9.7 Corporate Policies

It is understood and agreed that Contractor may provide the coverage referenced in this Agreement through policies covering other assets and/or operations operated by Contractor as long as any endorsement in respect of such policies in favour of any of the Financing Parties required to be made pursuant to the requirements of the LIL Project Finance Documents is clearly set out.

ARTICLE 10
TERM AND TERMINATION

10.1 Term

The term of this Agreement (the “**Term**”) commences on the Effective Date and will terminate in accordance with **Section 10.2**.

10.2 Termination

This Agreement will terminate on the earliest to occur of any of the following events:

- (a) the expiry of the LIL Lease Term;
- (b) written agreement of the Parties to terminate;

10.3 Extension of Term

Unless this Agreement has been earlier terminated and provided Contractor is not in default under this Agreement, no later than five years prior to the end of the Term, LIL Party may notify Contractor if it wishes to continue to receive Services subsequent to the Term. The applicable LIL Party and Contractor will then negotiate in good faith to agree upon the terms under which Contractor will provide and applicable LIL Party will purchase Services after the Term, including the price to be paid by such applicable LIL Party therefor. Unless expressly provided in this Agreement, if no agreement is reached by the Applicable LIL Party and Contractor, this Agreement shall not be extended and the matter shall not be referred to resolution pursuant to the Dispute Resolution Procedure.

10.4 Effect of Termination

- (a) When this Agreement terminates:
 - (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which will continue to be held in accordance with the provisions of **Sections 7.1** and **Article 14**; and
 - (ii) neither Party will have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 10.4**.
- (b) Notwithstanding the termination of this Agreement, the Parties will be bound by the terms of this Agreement in respect of:
 - (i) the final settlement of all accounts between the Parties;
 - (ii) the resolution of any issue on any Work Authorizations outstanding at the end of the Term;
 - (iii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the end of the Term;
 - (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; and
 - (v) any other obligations that survive pursuant to **Section 18.13**.

ARTICLE 11 **DEFAULT AND REMEDIES**

11.1 Partnership Events of Default

Except to the extent excused by Force Majeure, the occurrence of one or more of the following events will 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 10 days after the receipt of Notice from Contractor or Opco 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 11.1(a)**, 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 Contractor or Opco, 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 Contractor or Opco, as applicable;
- (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; or
- (e) any Insolvency Event occurs with respect to the Partnership.

11.2 Contractor and Opco 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) Contractor and Opco will 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 Contractor and Opco 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 11.2** and **Article 13**, Contractor and Opco may recover all Losses suffered by them 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 Contractor or Opco, as applicable, to recover any amounts owed to them by the Partnership under this Agreement.

11.3 Opco Events of Default

Except to the extent excused by a Force Majeure, the occurrence of one or more of the following events will constitute a default by Opco under this Agreement (an “**Opco Default**”):

- (a) Opco 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 10 days after the receipt of Notice from Contractor or the Partnership that such amount is due and owing;
- (b) Opco is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 11.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Opco of Notice thereof from Contractor or the Partnership, unless the cure reasonably requires a longer period of time and Opco is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Contractor or the Partnership, as applicable;
- (c) any representation or warranty made by Opco in this Agreement is false or misleading in any material respect;
- (d) Opco 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 Opco.

11.4 Contractor and the Partnership Remedies upon an Opco Default

- (a) General - Upon the occurrence of an Opco 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) Contractor and the Partnership, as applicable, will 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 Contractor and 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 11.4** and **Article 13**, Contractor and the Partnership, as applicable, may recover all Losses suffered by them that result from an Opco 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 Contractor or the Partnership, as applicable, to recover any amounts owed to them by Opco under this Agreement.

11.5 Contractor Events of Default

Except to the extent excused by a Force Majeure, the occurrence of one or more of the following events will constitute a default by Contractor under this Agreement (a “**Contractor Default**”):

- (a) Contractor 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 10 days after the receipt of Notice from Opco or the Partnership that such amount is due and owing;
- (b) Contractor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 11.5(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Contractor of Notice thereof from Opco or the Partnership, unless the cure reasonably requires a longer period of time and Contractor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Opco or the Partnership, as applicable;
- (c) any representation or warranty made by Contractor in this Agreement is false or misleading in any material respect;
- (d) Contractor 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 Contractor.

11.6 Opco and the Partnership Remedies upon a Contractor Default

- (a) General - Upon the occurrence of a Contractor 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) Opco and the Partnership will 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 up to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such Claims; and

- (ii) the rights, remedies and recourse available to Opco and 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 11.6** and **Article 13**, Opco and the Partnership may recover all Losses suffered by them that result from a Contractor Default up to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such Losses Claims, 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 Opco or the Partnership, as applicable, to recover any amounts owed to them by Contractor under this Agreement.
- (c) Gross Negligence, Wilful Misconduct and Fraud – Notwithstanding anything contained in this **Section 11.6**, where a Contractor Default constitutes gross negligence, willful misconduct or fraud by Contractor, recovery by Opco and Partnership shall not be limited to the maximum amount of \$10,000.00.

11.7 Equitable Relief

Nothing in this **Article 11** will limit or prevent either Party from seeking equitable relief, including specific performance or a declaration to enforce the other Party's obligations under this Agreement. In the case of a monetary award in equity against Contractor, other than monetary award resulting from instances of gross negligence, willful misconduct or fraud by Contractor, such award shall be limited to a maximum amount of \$10,000.00, plus amounts Contractor receives from third parties or Subcontractors attributable to the Losses giving rise to the award.

ARTICLE 12 LIABILITY AND INDEMNITY

12.1 The Partnership and Opco Indemnities

The Partnership and Opco shall each indemnify, defend, reimburse, release and save harmless Contractor and its Representatives, and the successors and permitted assigns of each of them, (collectively, the "**Contractor Group**") from and against, and as a separate and independent covenant each agrees to be liable for, all Claims that may be brought against any member of the Contractor Group by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of: [

- (a) any inaccuracy or breach of any representation or warranty made by the Partnership or Opco, as applicable, in this Agreement or any other document or instrument delivered by such Party pursuant to this Agreement, in any material respect;

- (b) any breach or failure by the Partnership or Opco, as applicable, to perform or comply with any agreement, covenant or obligation of such Party in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
- (c) any negligence, gross negligence, wilful misconduct or fraud by or on behalf of the Partnership or Opco, as applicable, occurring in connection with, incidental to or resulting from such Party's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.

12.2 Contractor Indemnity

Contractor shall indemnify, defend, reimburse, release and save harmless the Partnership, Opco and their respective Representatives, and the successors and permitted assigns of each of them, (collectively, the "**LIL Group**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the LIL Group by or in favour of a third party to the proportionate extent that the Claim is based upon:

- (a) any inaccuracy or breach of any representation or warranty made by Contractor in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;
- (b) any breach or failure to perform or comply with any agreement, covenant or obligation of Contractor in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
- (c) any negligence, gross negligence, wilful misconduct or fraud by or on behalf of Contractor occurring in connection with, incidental to or resulting from Contractor's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.

Notwithstanding the foregoing, except for instances of gross negligence, willful misconduct or fraud by Contractor, Contractor's duty to indemnify, defend, reimburse, release and save harmless under this **Section 12.2** shall be limited to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such Claims.

12.3 Own Property Damage

For the avoidance of doubt, it is the Parties' intent that, subject to any right a Party may have to seek compensation from a third party that caused the Loss or from insurance, each Party will be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements on the site of the LIL or any other site where the Services are performed (including, with respect to any member of the LIL Group, such property of such member of the LIL Group, and, with respect to any member of the Contractor Group, such property of such member of the Contractor Group), howsoever incurred, including Losses resulting from the provision of any Services or the action or inaction of another Party or its Affiliates or Representatives.

12.4 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 **Section 12.1** or **12.2**, as applicable, (individually and collectively, an “**Indemnified Party**”) as provided therein in the manner set forth in this **Section 12.4**.
- (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 will describe the Claim in reasonable detail and will 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 provide Notice to the Indemnitor hereunder will not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (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 will 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 12.4** 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 has received such Notice of election, it will be free to defend such Third Party Claim in any reasonable manner it sees 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 will 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 **Section 12.4(i)**.

- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent will not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise 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 will 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 will 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 will 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 will 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 will 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 both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party will have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 12.4** will 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 will 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.

12.5 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 13 LIMITATION OF DAMAGES

13.1 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 12** and **Article 13** of this Agreement will apply to any and all Claims.

13.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event will a Party be liable to another Party for a decline in market capitalization, 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 Services, in favour of a third party, will be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 13.2**, lost revenues or profits will be considered to be consequential, incidental or indirect damages.

13.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim by a Party will be calculated or determined in accordance with Applicable Law, and will 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 14
CONFIDENTIALITY**

14.1 Obligations of Confidentiality

The provisions of **Schedule 5** will apply to Confidential Information.

14.2 Disclosure of Agreement

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

**ARTICLE 15
ASSIGNMENT**

15.1 Restriction on Assignment

No Party shall assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing, without the prior written consent of each of the Parties to this Agreement, which consent may be arbitrarily withheld.

**ARTICLE 16
REPRESENTATIONS AND WARRANTIES**

16.1 Partnership Representations and Warranties

The Partnership represents and warrants to Opco and Contractor 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.

16.2 Opco Representations and Warranties

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

- (a) it is duly organized 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 Opco 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 Opco for Opco'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 Opco'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.

16.3 Contractor Representations and Warranties

Contractor represents and warrants to Opco and 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 Contractor 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 Contractor for Contractor'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 Contractor'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 17
DISPUTE RESOLUTION

17.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 4** (the "**Dispute Resolution Procedure**").
- (b) 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 17**, without prejudice to either Party's rights pursuant to this Agreement.
- (c) 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.

17.2 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 will describe the Claim in reasonable detail and

will 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 notify the Recipient Party will 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 to so notify promptly.

- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party will 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 18
MISCELLANEOUS PROVISIONS

18.1 Notices

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

To the Partnership

Labrador-Island Link General Partner Corporation, as General Partner
of Labrador-Island Link Limited Partnership
500 Columbus Drive
P.O. Box 1300
St. John's, NL A1B 0M1

Attention: General Counsel
E-mail: NalcorGeneralCounsel@nalcorenergy.com
Fax: (709) 737-1782

- and -

Attention: Walter Parsons, LIL Party Representative
E-mail: WalterParsons@nalcorenergy.com

To Opco:

Labrador-Island Link Operating Corporation
500 Columbus Drive
P.O. Box 15050, Station A
St. John's, NL A1B 0M5

Attention: General Counsel
E-mail: NalcorGeneralCounsel@nalcorenergy.com
Fax: (709) 737-1782

- and -

Attention: Walter Parsons, Opco Representative
E-mail: WalterParsons@nalcorenergy.com

To Contractor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800, Station A
St. John's, NL A1B 0C9

Attention: General Counsel
E-mail: NalcorGeneralCounsel@nalcorenergy.com
Fax: (709) 737-1782

- and -

Attention: Gerard Dunphy, Contractor Representative
E-mail: GDunphy@nalcorenergy.com

Such Notice will (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 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 will be deemed to have been given or made on the next Business Day. Either Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Party.

18.2 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.

18.3 Counterparts

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

18.4 Expenses of Parties

Except as otherwise provided herein, each Party will 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.

18.5 Announcements

No announcement with respect to this Agreement will be made by either Party without the prior approval of the other Party. The foregoing will not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Party before making any such announcement and gives due consideration to the views of the other Party with respect thereto. Both Parties shall use reasonable efforts to agree on the text of any proposed announcement.

18.6 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, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the matters set forth herein will be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting either Party as the agent or legal representative of the other Party for any purpose nor to permit either Party to enter into agreements or incur any obligations for or on behalf of the other Party.

18.7 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.

18.8 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 will 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.

18.9 Time of the Essence

Time will be of the essence.

18.10 Amendments

No amendment or modification to this Agreement will be effective unless it is in writing and signed by each Party.

18.11 No Waiver

Any failure or delay of either 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 will not affect the validity of this Agreement, or any part hereof, and will 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 will be limited to its express terms and will not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

18.12 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 will acquire or have any right, remedy or claim under or by virtue of this Agreement.

18.13 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.

18.14 Successors and Assigns

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

18.15 Crown not an Affiliate


The NL Crown is deemed to not be an Affiliate of any Party hereto.


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

Executed and delivered by Labrador-Island Link General Partner Corporation, on behalf of Labrador-Island Link Limited Partnership, in the presence of:

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


Name: _____

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

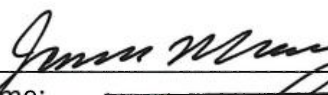
By: 
Name: *W Parsons*
Title: *VP Transmission and Community Affairs*


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

Executed and delivered by Labrador-Island Link Operating Corporation, in the presence of:

LABRADOR-ISLAND LINK OPERATING CORPORATION


Name: _____


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

By: 
Name: *W Parsons*
Title: *VP Transmission and Community Affairs*

We have authority to bind the corporation.

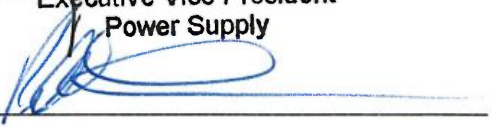
Executed and delivered by Nalcor Energy, in the presence of:

NALCOR ENERGY

By: 

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


Name: _____

By: 

Name: _____
Title: Peter A. Hickman
VP General Counsel
& Corp. Secretary

We have authority to bind the corporation.

**LABRADOR-ISLAND LINK
MASTER SERVICES AGREEMENT**

SCHEDULE 1

LIL AGREEMENTS

SCHEDULE 1
LIL AGREEMENTS

LIL Assets Agreement
LIL Remedies Agreement
LIL Lease
Transmission Funding Agreement
Multi-Party Pooling Agreement
LIL Muskrat Falls Asset Interconnection Agreement
LIL Soldiers Pond Asset Interconnection Agreement
LIL Project Finance Agreement, LIL Master Definitions Agreement and the other LIL Project Finance Documents
Opco NLH Security Agreement
Opco Step-in Agreement
Reciprocal IRU Agreement
Operations & Maintenance Agreement for the Reciprocal IRU
The Joint Pole Line and Communication Facilities Network Construction
IRU Fibre and Maintenance Agreement

**LABRADOR-ISLAND LINK
MASTER SERVICES AGREEMENT**

SCHEDULE 2

OPERATING AND MAINTENANCE SERVICES

**SCHEDULE 2
OPERATING AND MAINTENANCE SERVICES**

LIL Operating and Maintenance Services

All activities and undertakings performed by or on behalf of LIL Party that are required (considering the remaining service life of the LIL) to operate, maintain and sustain the LIL in accordance with the requirements of Good Utility Practice, including but not limited to:

- Research, develop and execute all asset maintenance programs including utilization of a computerized maintenance management system
- Establishing and executing emergency response plans
- Establishing and maintaining inventory facilities and systems for procurement of critical parts, materials, consumables, tools, etc.
- Training, mentoring and oversight for personnel
- Management of Crown titles and land easements
- Vegetation management (surveillance, spray and cutting)
- Telecommunications systems maintenance
- Establishing and managing service contracts and agreements with Affiliates and third parties
- Establishing and maintaining fire protection services and systems (fire protection panels, alarms, suppression systems and arrangements for regional/provincial fire services)
- Transportation of equipment to/from work sites
- Helicopter services (transport of materials and workers)
- Remote Operated Vehicle (ROV) and diving services
- Provision of gases (hardware, equipment and supply)
- Crane and elevator services
- Oil removal and vacuum truck services
- Obtaining and establishing utility services (electricity and wired and mobile telephones)
- Snow clearing (sites, parking lots, walkways, doors and ice control)
- Trash removal
- Janitorial services
- Pest control
- Maintaining Comprehensive data bases regarding equipment inventory, maintenance procedures / standards and maintenance schedules

LABRADOR-ISLAND LINK
MASTER SERVICES AGREEMENT

SCHEDULE 3

BUSINESS SUPPORT AND TECHNICAL SERVICES

**SCHEDULE 3
BUSINESS SUPPORT AND TECHNICAL SERVICES**

Contractor may provide the following Services to the LIL Party, along with any Services covered by a LIL Party approved Work Authorization:

1. Administrative Services

Contractor's invoice to LIL Party will include a monthly administration fee which covers the following Services:

1.1 Human Resources

- (a) administration and coordination of all employee related services including payroll, recruitment, employee benefit programs, pensions, training and the rewards and recognition program as well as the maintenance of the human resources database; and
- (b) administer the performance appraisal system and salary surveys.

1.2 Safety and Health

- (a) provide occupational health services including coordinating efforts with regard to employee safety as well as wellness, disability and sick leave management, and medical screening.

1.3 Information Systems

- (a) provide assistance and support in the areas of software applications, planning and integration and business solutions;
- (b) provide maintenance, administration services and technical support in relation to the company wide computer infrastructure and network.

1.4 Facility Services

- (a) provide office accommodations utilized to support a LIL Party;
- (b) provide telephone infrastructure and related services.

For greater certainty, the administration fee shall not include costs associated with the provision of these Services which are otherwise recovered by Contractor, based on actual hours worked in support of the LIL Party; charged at the direct labour rate. All labour will require assignment of a work order to track time charged to LIL Party.

2. Financial Reporting Services

- (a) engagement and oversight of the financial reporting processes;
- (b) conduct accounting research as required;
- (c) resolve accounting treatment issues as they arise;
- (d) support ad-hoc initiatives and analysis in liaison with LIL Party in response to information requests;
- (e) provide guidance and direction on corporate policy associated with financial reporting;

- (f) provide guidance and direction with International financial reporting standards compliance;
- (g) provide direction and review required disclosures for the annual report;
- (h) perform accounting research, as required; and
- (i) update and maintain, in the Nalcor Enterprise Resource Planning systems, the general ledger chart of accounts, in collaboration with the LIL Party.

3. Accounting Services

3.1 Accounts Payable

- (a) control and co-ordinate processing of all LIL Party invoices;
- (b) data entry, both manual and electronic upload, of LIL Party invoices;
- (c) downloading and processing of purchase card transactions; and
- (d) processing of payments by both cheque and electronic funds transfer.

3.2 Accounts Receivable

- (a) manage, control and record accounts receivable activities;
- (b) data input of accounts receivable billing requests and generation of invoices;
- (c) receipt of payments, clearing and reconciliation of outstanding receivables;
- (d) maintain the accounts receivable sub-ledger.

3.3 General Ledger Accounting

- (a) electronic upload of LIL general journal entries;
- (b) reconcile and analyze bank statements including the follow up and resolution of outstanding items;
- (c) reconcile and analyze general ledger accounts.

3.4 Capital Asset Accounting

Provide all support necessary to manage, control and record capital asset activities.

4. Investment Evaluation & Financial Planning

- (a) facilitate the production, review and distribution of long-term financial projections;
- (b) modeling and analysis of data and financial consulting related to various short and long term decisions;
- (c) participate in the LIL Party contract due diligence process, as required;
- (d) support the review of LIL Party projections being performed by external parties; responding to both internal and external inquiries and requests for information related to Investment Evaluation department
- (e) provide support and assistance with the execution and administration of requirements under commercial and financing agreements; and
- (f) any other tasks and support as pre-approved by the LIL Party.

5. Taxation Services

- (a) interpret and ensure compliance with various international, federal, provincial and municipal tax laws;

- (b) making representation to authorities in tax matters where necessary;
- (c) providing training, advice and direction to LIL Party personnel on new and existing tax laws;
- (d) preparing income, non-resident withholding and commodity tax filings and returns related to Opco or the Partnership;
- (e) ensuring payment of all tax liabilities including the preparation of related journal entries; and
- (f) perform periodic audits to ensure that commodity tax and non-resident withholding taxes have been appropriately recorded.

6. Treasury and Risk Management

6.1 Banking and Cash Management

- (a) identify banking needs and obtain all required banking services;
- (b) resolve any and all operational issues encountered with day to day banking services;
- (c) day-to-day cash management;
- (d) managing receipts;
- (e) processing cheques, electronic funds transfers (EFT) and wire transfers;
- (f) purchasing of foreign currencies as required; and
- (g) interface with the Contractor financial reporting team and LIL Party to ensure appropriate accounting treatment for all cash management activities and associated balances.

6.2 Financial Risk Management

- (a) perform creditworthiness reviews of bidders in accordance with Power Supply Policies;
- (b) participate in the LIL Party contract due diligence process, as required;
- (c) purchase and manage hedging instruments (e.g. forwards, commodity price swaps and options) as required to support any financial risk management strategies devised by LIL Party; and
- (d) interface with the Contractor financial reporting team and LIL Party to ensure appropriate accounting treatment for any hedging instruments put in place.

6.3 Risk and Insurance

- (a) provide services related to the placement, administration, risk control and risk financing of the corporate insurance program;
- (b) coordinate preparation and resolution of all insurance claims; and
- (c) provide support through participation in the due diligence process.

7. Legal

- (a) provision of legal services including corporate secretary services, regulatory work, commercial negotiations, property acquisitions, litigation matters;
- (b) review of commercial agreements and templates, including due diligence and cold eyes review LIL Party contracts; and
- (c) Any other legal services required in connection with the activities of LIL Party.

8. Internal Audit

- (a) provide auditing services as determined in conjunction with LIL Party management; and
- (b) provide assistance to the external auditors in performing procedures related to the annual year-end audit.

9. Environmental Services

- (a) labor support for specific environmental initiatives and regulatory compliance; and
- (b) corporate environmental services in accordance with Good Utility Practice.

10. Labour Relations

Provide labor relations support on an ad hoc basis at the request of LIL Party.

11. Engineering Services

- (a) Acceptance Testing - during the commissioning process for the LIL, act as the LIL Party representative during acceptance testing activities to verify and ensure all appropriate testing has been satisfactorily completed.
- (b) Provide support to design, construction, procurement (as necessary) and project management of operating and capital projects with regards to completion, improvements and operations of the LIL.
- (c) Provide support to engineering studies, technical investigations, technical specifications, construction and operation coordination and analysis to support sustained reliable operation of the LIL.

12. Communications

Provide stakeholder and community relations related communications provided that Canada has received prior notice of any such communications and has been consulted by the Contractor regarding the contents of same.

13. Administrator Services

Provide administrative services on behalf of Labrador Island Link Funding Trust in accordance with the Administration Agreements with Labrador Island Link Funding Trust.

14. Supply Chain & Procurement

Coordinate efforts related to procurement process activities including tendering, purchasing and contract administration.

15. Inventory Management

Provide all support necessary to manage, control, record and administer all LIL Party inventory activities.

16. Other

Contractor shall provide, directly or by Subcontract, such other professional services as may reasonably be required by the LIL Party from time to time. Making application to or responding to

Authorized Authorities, including those in respect of all necessary approvals for the performance of the Services as directed by the LIL Party from time to time.

LABRADOR-ISLAND LINK
MASTER SERVICES AGREEMENT

SCHEDULE 4

DISPUTE RESOLUTION PROCEDURE

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SCHEDULE 4
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 Party**” 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 Party's 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 the Party requesting a review under this **Section 3** by Notice to the other Party (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 Party 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 Party (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, 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 **Sections 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 both 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 the other 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 **Sections 6.3(a)** or **(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.

APPENDIX A
TO
DISPUTE RESOLUTION PROCEDURE

COMMERCIAL ARBITRATION CODE

Appendix A

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.

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

(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 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.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
 - (a) the party making the application furnishes proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of *Canada*; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code*; or
 - (b) the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or
 - (ii) the award is in conflict with the public policy of *Canada*.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of *Canada*, the party shall supply a duly certified translation thereof into such language.

ARTICLE 36
GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of *Canada*.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

**LABRADOR-ISLAND LINK
MASTER SERVICES AGREEMENT**

SCHEDULE 5

CONFIDENTIAL INFORMATION

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SCHEDULE 5
CONFIDENTIAL INFORMATION SCHEDULE

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Articles of 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);

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

“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 7 - 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 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 Acknowledgements

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 The Parties and each of their 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 such Party and each of its 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 the other 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 other Party, as applicable. It is further acknowledged and agreed that each Party has represented to the other Party that the Confidential Information disclosed is treated consistently in a confidential manner by 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 Party or its 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 between the Party 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.

LABRADOR TRANSMISSION CORPORATION

and

NALCOR ENERGY

**LABRADOR TRANSMISSION ASSETS
MASTER SERVICES AGREEMENT**

July 4, 2018

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**LABRADOR TRANSMISSION ASSETS
MASTER SERVICES AGREEMENT**

THIS LTA MASTER SERVICES AGREEMENT is made effective the 4th day of July, 2018 (the “**Effective Date**”)

B E T W E E N :

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 -

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**” or “**Contractor**”)

WHEREAS:

- A. LTC wishes to arrange for Services and for the delivery of such Services, as detailed in the descriptions set forth in **Schedules 2** and **3** of this Agreement; and
- B. The Contractor wishes to provide such Services in consideration of the compensation provided for by this Agreement;

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 and, subject to **Section 1.2(h)**, in the Schedules:

“**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 modified, amended, supplemented or restated from time to time 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;

“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;

“Canada” mean Her Majesty the Queen in Right of Canada;

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

“Claiming Party” has the meaning set forth in **Section 17.2(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;

“Collateral Agent” has the meaning given to such term in the MF/LTA Master Definitions Agreement;

“Confidential Information” means, with respect to the LTA:

- (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;

“Contractor” has the meaning set forth in the preamble to this Agreement and includes Contractor’s successors and permitted assigns;

“Contractor Default” has the meaning set forth in **Section 11.3**;

“Contractor Group” has the meaning set forth in **Section 12.1**;

“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 will 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);

“Deliverable” means any tangible or intangible document, software or material which is, or is to be, produced, created, provided, delivered or made available by Contractor to LTC, including any specifications, technical information, plans, data, computer code, reports, manuals, or other documents;

“Direct Claim” has the meaning set forth in **Section 12.4(b)**;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to the other Party or an Affiliate of the 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 17.1(a)**;

“Effective Date” has the meaning set forth in the commencement of this Agreement;

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

“**Financing Parties**” means Canada and the Collateral Agent and “**Financing Party**” means either one of them;

“**First Party**” has the meaning set forth in **Section 6.2**;

“**Force Majeure**” means an event, condition or circumstance 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 hereunder. 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 LTA or any machinery or equipment comprising part of or used in connection with the LTA;
- (e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the Services, 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; and
- (f) any event or circumstance affecting a Subcontractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that the Subcontractor is relieved from the performance of its obligations under the applicable Subcontract,

provided that:

- (i) the effect of such event of Force Majeure must continue for a period of not less than one day;

- (ii) lack of finances or changes in economic circumstances of a Party will not be considered an event of Force Majeure; and
- (iii) any delay in the settlement of any Dispute will not be considered an event of Force Majeure;

"GIA" means the Generator Interconnection Agreement dated November 29, 2013 among Newfoundland and Labrador Hydro (in its capacity as the NLSO), MFC and LTC relating to the development and operation of the LTA;

"GIA Term" has the meaning set forth in the GIA;

"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 will be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice will not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather will 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;

"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);

"Indemnified Party" has the meaning set forth in **Section 12.4(a)**;

"Indemnitor" has the meaning set forth in **Section 12.4(a)**;

"Independent Engineer" means Argirov Engineering Inc. and any successor thereof and any other engineering consultants appointed from time to time for the LTA, with the consent of LTC, by the Collateral Agent or any other person to advise the Financing Parties in replacement thereof, it being understood that only one engineering or consulting firm can occupy this role at any one time;

“**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;

“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 either 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;

“LTA” means equipment and facilities comprising two 315 kV AC transmission lines, two 735/315 kV transformers and two 735 kV lines and all related components, including terminal, telecommunications and switchyard equipment, constructed between the Muskrat Falls generating station, the Labrador Island Link Limited Partnership converter station at Muskrat Falls and the Churchill Falls 735 kV switchyard extension owned by CF(L)Co including:

- (a) foundations, underground 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;

“LTA Agreements” means those agreements related to the LTA as provided at **Schedule 1**;

“LTA Group” has the meaning set forth in **Section 12.2**;

“LTC” has the meaning set forth in the preamble to this Agreement and includes LTC’s successors and permitted assigns;

“LTC Default” has the meaning set forth in **Section 11.1**;

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

“MF/LTA Master Definitions Agreement” means the second amended and restated master definitions agreement dated as of May 10, 2017 among the Collateral Agent, BNY Trust Company of Canada, as issuer trustee of the Muskrat Falls/Labrador Transmission Assets Funding Trust, the Muskrat/LTA Security Trustee, Nalcor, Her Majesty in right of the

Province of Newfoundland and Labrador, MFC, LTC, as same may be further amended, restated, supplemented or otherwise modified or replaced from time to time;

“MF/LTA Project Finance Agreement” means the second amended and restated MF/LTA project financing agreement dated as of May 10, 2017 among the Collateral Agent, BNY Trust Company of Canada, as issuer trustee of the Muskrat Falls/Labrador Transmission Asset Funding Trust and MFC and LTC, as credit parties, as same may be further amended, restated, supplemented or otherwise modified or replaced from time to time;

“MF/LTA Project Finance Documents” has the meaning given to such term in the MF/LTA Master Definitions Agreement;

“MF/LTA Security Trustee” means Computershare Trust Company of Canada, a trust company, in its capacity as security trustee under certain security agreements and instruments issued and delivered pursuant to the MF/LTA Project Finance Agreement;

“MFC” means Muskrat Falls Corporation, a corporation incorporated pursuant to the laws of the Province of Newfoundland and Labrador, and a wholly-owned subsidiary of Nalcor;

“Marketing Personnel” means a natural Person who, individually or on behalf of any other Person, sells or purchases for consumption or resale capacity, energy, energy derivatives and ancillary services in the wholesale power markets, and includes any natural Person who conducts such transactions on behalf of transmission service customers, power exchanges, transmission owners that are not also a system operator, load serving entities, loads, holders of energy derivatives, generators and other power suppliers and their designated agents;

“NL” means the Province of Newfoundland and Labrador;

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

“NLH” means Newfoundland and Labrador Hydro, a corporation incorporated under the laws of NL, and includes its successors;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“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 either Party to the other under this Agreement, which communication shall be given in accordance with **Section 18.1**;

“O&M Activities” means all activities and undertakings performed by or on behalf of LTC that are required (considering the remaining LTC service life) to operate, maintain and sustain the LTA;

“Overhead Burden” means costs incurred in support of business activities, detailed in Schedule 3 – Business Support and Technical Services, including, without limitation:

- (a) indirect labour and associated benefits in service areas such as administration, general accounting, treasury, tax, human resources, payroll, information systems, research, corporate planning and economics, legal counsel, corporate management, risk management, internal audit, health and safety, office services and other similar functions;
- (b) support service costs such as head office lease payments, leasehold improvements, depreciation charges, heat and light, insurance, property tax and maintenance and similar costs associated with operation and maintenance of support facilities, systems and equipment; and
- (c) payroll allowances and burdens such as:
 - (i) government mandated payroll costs which may include, without limitation, Canada pension plan, employment insurance, workers’ compensation, health and post-secondary education tax; and
 - (ii) costs associated with established benefit plans which are made available to all employees on a regular basis and are not imposed by an Authorized Authority. Such benefit plans may include, without limitation, the following:
 - (A) employee insurances including life, accidental death and dismemberment, medical and dental;
 - (B) company pension; and
 - (C) leaves including training, short and long term sick leave, ease back, medical travel and appointments and annual leave;

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

“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;

“Power Supply Policies” mean the policies, procedures, processes and controls established by Nalcor and/or its power supply division, including those relating to intercompany transaction costing, that would be applicable to the provision of Services under this Agreement, as may be amended from time to time, provided that any such policies, procedures, processes and controls and any amendment thereto does not derogate from or

change the principle of cost based recovery or otherwise include or introduce a profit component;

"PUB" means the Board of Commissioner of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador), or any successor performing substantially the same functions;

"Recipient Party" has the meaning set forth in **Section 17.2(a)**;

"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;

"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 and Affiliates of a Party;

"Services" means:

- (a) the services described in **Schedules 2 and 3** as may be amended from time to time; and
- (b) the services and Deliverables that are required to complete O&M Activities of LTC;

under, and in accordance with the provisions of, the agreements listed at **Schedule 1**;

"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;

"Subcontract" means an agreement (including any supplement or amendment) entered into between Contractor and any Person in the manner and to the extent permitted under the terms of this Agreement by which Contractor engages such Person to perform any part of the Services;

"Subcontractor" means any Person engaged by Contractor to perform any part of the Services pursuant to a Subcontract, and will include the successors and permitted assigns of any such Person;

“**Supporting Material**” has the meaning set forth in **Section 5.1(b)**;

“**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 transmission 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;

“**Term**” has the meaning set forth in **Section 10.1**;

“**Third Party Claim**” has the meaning set forth in **Section 12.4(b)**;

“**third party**” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

“**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; and

“**Warehouse Costs**” means the cost associated with operating Contractor or Contractor Affiliate warehouses used to provide care, custody, control and supply of materials, tools, supply, consumables, and/or equipment required in the performance of the Services; and

“**Work Authorization**” means an authorization or similar work order providing instructions to Contractor to execute a scope of work in respect of Services as is further defined in **Section 2.5**.

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 will 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. All references to a given agreement, instrument or other document will be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date.

- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it will 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 will be done in accordance with Canadian GAAP, except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, each Party shall use commercially reasonable efforts to provide the other Party with all of the information it needs to prepare its accounting records in accordance with Canadian GAAP.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) 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 date of this Agreement, will 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 will include, and will 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 will 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 will, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto 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 will 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 will 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 will 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 will 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 will 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 will prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement will 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 17**, the Parties irrevocably consent and submit 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 Schedules

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

- Schedule 1 - LTA Agreements
- Schedule 2 - Operating and Maintenance Services
- Schedule 3 - Business Support and Technical Services
- Schedule 4 - Dispute Resolution Procedure
- Schedule 5 - Confidential Information

ARTICLE 2 **PROVISION OF SERVICES**

2.1 Contractor Obligations

Contractor shall provide the Services to LTC in accordance with the terms of this Agreement, each Work Authorization issued under this Agreement and the applicable provisions of the LTA Agreements and in particular, Contractor shall:

- (a) maintain the standards of health, safety, environmental protection and loss prevention in accordance with all Applicable Laws and all health, safety and environmental standards, regulations and guidelines of all applicable Authorized Authorities;
- (b) ensure that its personnel and the personnel of any Subcontractors performing the Services have received safety, accident and loss prevention orientation and training as it relates to the performance of the Services. Contractor shall require of its personnel, agents and Subcontractors that they, and as applicable, their employees, strictly obey all safety and environmental orders, government safety and environmental regulations and guidelines and instructions issued by LTC;
- (c) ensure that the Services are provided in accordance with Good Utility Practice, comply with all applicable Reliability Standards, and conform to the quality and description stated in each Work Authorization issued under this Agreement (which Work Authorizations must respect the applicable requirements of the LTA Agreements) and follow, during any applicable manufacturer' warranty period, such manufacturers' maintenance and operating instructions;
- (d) comply, on a timely basis, with all requirements of LTC to provide Services consistent with the provisions of this Agreement and the LTA Agreements and all Applicable Laws in effect or that may come into effect during the Term;

- (e) provide all necessary qualified personnel to perform its obligations under this Agreement;
- (f) provide all necessary support services required to perform the Services, including without limitation, system hardware and software, administrative services and office space and related support;
- (g) obtain and maintain all directions, guidelines, permits, certificates, authorizations, dispensations and licenses of any type whatsoever necessary for the performance of its obligations under this Agreement; and
- (h) rectify any and all deficiencies in its performance of the Services identified, discovered or noted by LTC or any Authorized Authority.

2.2 LTC Obligations

LTC acknowledges and agrees that it shall provide Contractor with all information and documents within its care and control necessary for Contractor to fulfill its obligations under **Section 2.1**, including agreements, operation and maintenance instructions and manuals, punch lists, drawings, environmental permits and licenses.

2.3 Confirmation of Services to be Provided

Contractor acknowledges that it will review and verify the details contained in any Work Authorization issued under this Agreement and Contractor shall advise LTC of any errors, omissions and inconsistencies in the Work Authorization prior to commencement of work thereunder and shall not proceed with any part of the Services affected by such until resolved by LTC.

2.4 Representations and Warranties regarding Performance

Contractor represents and warrants that:

- (a) it has the required skills, experience, facilities, equipment and capacity to perform the Services in a timely manner and in accordance with this Agreement and the LTA Agreements;
- (b) it has knowledge of all of the requirements of Applicable Laws and business practices that must be followed in performing the Services; and
- (c) it shall perform the Services with all due diligence and in a manner consistent with the standards in the industry for such services, ensuring compliance with the applicable requirements of the LTA Agreements.

Contractor covenants that the representations and warranties set forth in this **Section 2.4** will remain accurate and in force and effect throughout the Term.

2.5 Work Authorizations

- (a) Effect and Contents - Contractor will prepare and maintain Work Authorizations in accordance with Power Supply Policies for LTC approval covering Services or as otherwise mutually agreed and outlined in the Work Authorization. LTC approved Work Authorizations will be issued to Contractor as authorization to proceed with the Services. Each Work Authorization will be effective when signed by authorized representatives of LTC and Contractor and will set forth, as applicable, scope and specifications, fee arrangements, payment schedule, various activities and tasks to be performed, acceptance criteria, a schedule of estimated completion dates and roles and responsibilities of the Parties. Each duly signed Work Authorization is incorporated into and forms part of this Agreement (“**Work Authorization**”).
- (b) Order of Precedence - To the extent there are any conflicts or inconsistencies between the provisions of this Agreement and any Work Authorization, the provisions of this Agreement will take precedence and govern, unless otherwise expressly stated in the Work Authorization.

2.6 Contractor’s Responsibilities

Except as otherwise expressly set out in the applicable Work Authorization, Contractor shall provide, administer, manage, support, maintain and pay for applicable resources (including personnel, hardware, software, facilities, services and other items, however described) necessary or appropriate for Contractor to provide, perform or deliver the Services or customarily provided as part of services similar to the Services.

2.7 Reports by Contractor

- (a) Status Reports – if requested by LTC, Contractor shall provide LTC with reports on the status of the Services in the form reasonably requested by LTC.
- (b) Reports of Non-Compliance - Contractor must promptly provide Notice to LTC and any Financing Party entitled to receive such Notice in accordance with the requirements of the LTA Agreements, as applicable if Contractor becomes aware that it is not developing, providing, performing or delivering Services in accordance with the terms, conditions, methodologies, warranties, specifications or timelines required by this Agreement, any of the provisions of the LTA Agreements or a Work Authorization, or if Contractor anticipates that this is likely to occur. Such Notice must provide the particulars of the non-compliance or anticipated non-compliance along with the steps Contractor proposes to take to address or prevent the non-compliance or to mitigate the consequences thereof.

2.8 LTC Approvals

Any Approval by LTC of any Services or any participation by LTC in any Services provided by Contractor will in no way mitigate, reduce, or otherwise limit Contractor’s obligations hereunder.

2.9 Representatives of the Parties

- (a) Contractor's Representative - Contractor shall appoint by Notice to LTC a representative who will be responsible for the Services, and who is empowered to make decisions on behalf of Contractor and authorized to maintain liaison with LTC.
- (b) LTC's Representative - LTC shall appoint by Notice to Contractor a representative who is empowered to make decisions on behalf of LTC and authorized to maintain liaison with Contractor.

2.10 Cancellation of Services

- (a) Notice of Cancellation - LTC reserves the right upon Notice to Contractor to cancel any of the Services hereunder, or any part or component thereof, effective as of the date specified in such Notice, or as otherwise agreed by the Parties. Upon receipt of a cancellation Notice, Contractor shall make commercially reasonable efforts to effect such cancellation promptly and minimize further costs, and shall promptly deliver to LTC completed or partially-completed Deliverables, work-in-process and LTC Confidential Information in accordance with the cancellation Notice.
- (b) Payment on Cancellation - In respect of Services cancelled pursuant to **Section 2.10(a)**, LTC shall pay:
 - (i) all related fees and expenses properly incurred by Contractor prior to cancellation of the Services; and
 - (ii) reasonable fees and expenses related to future commitments Contractor has made to third parties, including Subcontractors, related to the cancelled Services that Contractor cannot terminate,provided that in either case those fees and expenses were properly incurred in accordance with this Agreement or specifically pre-authorized in writing by LTC.
- (c) Effect of Cancellation - Cancellation or termination of Services will not automatically terminate this Agreement.

**ARTICLE 3
NALCOR STATUS AND SUBCONTRACTING**

3.1 Contractor Status

- (a) In the provision of Services, Contractor shall operate as an independent contractor. In the provision of Services, nothing in this Agreement or any Work Authorization will be construed to constitute Contractor as an agent, servant, employee or subcontractor of LTC and Contractor shall not represent or hold itself out as an agent of LTC or an agent of any Affiliate of LTC.

- (b) Contractor's personnel and Subcontractors will be under the direct supervision and control of Contractor and not of LTC. Contractor accepts complete responsibility as the principal for Contractor's personnel and Subcontractors.
- (c) Without limiting **Article 12**, Contractor shall indemnify and hold LTC harmless from all costs and expenses arising out of any claim or liability by reason that Contractor is considered an agent, servant, employee or subcontractor of LTC up to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such claims or liability. Notwithstanding the foregoing, where Contractor is considered an agent, servant, employee, subcontractor or Affiliate of LTC, recovery by LTC against such Contractor in connection with any such claim or liability by reason of Contractor's gross negligence, wilful misconduct or fraud shall not be limited to the maximum amount of \$10,000.00.

3.2 Subcontracting

- (a) Subcontractors - Contractor may provide the Services itself or it may engage suitably qualified Subcontractors to provide some or all of the Services. The Contractor shall provide LTC with 10 days' notice of each Subcontractor it intends to engage for the purpose of providing Services should such contract for Services be material. LTC reserves the right to disapprove of the use of any Subcontractor providing such material Services by providing written notice of such disapproval within 10 days of receipt of notice from Contractor. Notwithstanding the foregoing, LTC acknowledges and agrees that Contractor may utilize personnel employed by, or otherwise associated with, Contractor's Affiliates in the performance of the Services in which case no notice shall be required. Contractor warrants to LTC that all Services performed by Subcontractors, whether third parties or Affiliates of Contractor, will be performed in accordance with the requirements of this Agreement (including, without limitation, the requirement that the Services are provided in accordance with Good Utility Practice) and any applicable requirements of the LTA Agreements. Contractor will remain responsible for all aspects of the Services, including the quality of the Services performed by Subcontractors. Contractor shall oversee the performance of all Subcontractors and keep such records and accounts and furnish such reports and information relative to Subcontractors as LTC may reasonably request.
- (b) General Standards of Subcontracts - Contractor shall ensure that all Subcontracts are consistent with the provisions of this Agreement (including, without limitation, the requirement that the Services are provided in accordance with Good Utility Practice) any Work Authorizations issued under this Agreement and with the rights of LTC and the obligations of Contractor under this Agreement. Contractor shall preserve and protect the rights of LTC under this Agreement with respect to the Services to be performed by any Subcontractors so that the subcontracting thereof will not prejudice such rights.

- (c) Subcontracts not to Bind LTC/Specific Contents - No Subcontract will bind or purport to bind LTC. All Subcontracts will contain:
 - (i) a clear statement that Contractor is entering into such Subcontracts as principal and not as agent for any other Person;
 - (ii) a provision permitting the assignment of any material Subcontract by Contractor to LTC; and
 - (iii) to the extent that the Subcontractor is an Affiliate of Nalcor, compensation provisions that comply with the provisions of **Section 4.1**.
- (d) Responsibility of Contractor - Contractor will remain liable and obligated to LTC for the timely and proper performance of all of its obligations hereunder, even if such obligations are delegated to one or more Subcontractors. Contractor will also be liable hereunder for any action or inaction of any Subcontractor in connection with this Agreement as if such action or inaction was that of Contractor.
- (e) Replacement - In the event that LTC determines, in its sole discretion and for reasons that are not unlawful, that the continued engagement by Contractor of any Subcontractor or Subcontractor personnel is not in the best interests of LTC, LTC may request the termination of such Subcontractor or Subcontractor personnel and Contractor shall (i) immediately remove such Subcontractor or Subcontractor personnel from working on the Services, and (ii) expeditiously provide a suitably qualified replacement.

ARTICLE 4

COMPENSATION

4.1 Compensation

Compensation is based on the principle of actual cost recovery with no profit element included for the Contractor and the Subcontractors that are Affiliates of the Contractor. Subcontractors that are not Affiliates of the Contractor shall be selected pursuant to the Power Supply Policies. Compensation for those Subcontractors shall be in accordance with the terms and conditions of contracts awarded to those Subcontractors by Contractor. LTC shall reimburse the Contractor for all LTC approved expenses and costs expended by the Contractor in providing the Services, provided that all such expenses and costs are reasonable and necessarily expended. For the delivery of Services under this Agreement, LTC shall pay compensation in accordance with the following:

- (a) For the provision of Contractor or Contractor Affiliate supplied labour, materials, tools, supply, consumables, and/or equipment used in the performance of the Services required in accordance with this Agreement, an amount equal to actual cost without profit element, including a reasonable allocation of Warehouse Costs and Overhead Burden determined in accordance with Power Supply Policies.

- (b) For the provision of Subcontractor supplied labour, materials, tools, supply, consumables, and/or equipment, required for the performance of the Services in accordance with this Agreement, whether that of a third party or a Contractor Affiliate, reasonable and necessary documented costs of such labour, materials, tools, supply, consumables, and/or equipment invoiced by the Subcontractor to the Contractor and attested and approved by Contractor as valid and correct charges.
- (c) Any amounts, fees, administration expenses, Warehouse Costs or Overhead Burden invoiced to LTC shall reflect actual use of resources and inputs without any profit element (other than for a Subcontractor which is not a Contractor Affiliate) and if based on estimates approved by LTC shall be reconciled and adjusted periodically, but no less frequently than annually, to reflect invoicing and payment of actual and reasonable cost associated with respect to such amounts, fees, administration expenses, Warehouse Costs or Overhead Burden.
- (d) Any other request for compensation by Contractor shall require LTC approval prior to being eligible for reimbursement.

ARTICLE 5
INVOICING AND PAYMENT

5.1 Invoicing and Payment

- (a) Contractor shall submit monthly invoices, in a format acceptable to LTC, for expenditures chargeable to LTC and associated with the performance of Services in the preceding month. Invoices shall be detailed in accordance with the LTC's code of accounts as established from time to time or other details as reasonably requested by LTC.
- (b) Invoices will be accompanied by all relevant supporting documentation as the LTC may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced, along with a summary sheet cross referenced to all supporting documentation ("**Supporting Material**"). LTC shall not be responsible or liable for any Claim arising from delays in payment due to Contractor not providing complete Supporting Material, satisfactory to LTC.
- (c) LTC shall have no obligation to pay Contractor for performance of Services, which have not been authorized by LTC pursuant to a Work Authorization or otherwise in accordance with this Agreement.
- (d) LTC shall pay all invoices within 30 days after receipt thereof, except that if LTC disputes any item invoiced. LTC shall notify Contractor of any item disputed and specifying the reason therefor. Payment of the disputed item shall be withheld until settlement of the dispute and payment shall be made on the undisputed portion of the invoice.

- (e) Any dispute concerning the amount of any payment(s) including, without limitation, any dispute regarding LTC's right under this Agreement or otherwise to offset any claim it may have, shall not relieve Contractor of its obligation to proceed with all due diligence to provide the Services to be performed under this Agreement.
- (f) The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after Contractor's receipt of a notification of disputed amounts. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, LTC shall pay any amount determined to be owing to Contractor in accordance with this **Article 5**.
- (g) LTC shall be entitled to withhold payment, setoff or deduct from Contractor's payments, to the extent necessary to protect LTC in respect of:
 - (i) invoiced amounts reasonably disputed by LTC;
 - (ii) failure of Contractor to make payments promptly when due to Subcontractors, Authorities and its agents;
 - (iii) failure of Contractor to remit or pay any Tax or make any other payment required under Applicable Laws where LTC, acting reasonably, determines that any such remittance or payment may be assessed against the LTC;
 - (iv) defective Services not repaired, replaced or corrected;
 - (v) liens or claims filed, or reasonable evidence indicating to LTC the probability of claims or liens being filed, with respect to the Services;
 - (vi) any indebtedness of Contractor to LTC; and
 - (vii) any amount as permitted or required by Applicable Laws.
- (h) Payments to Contractor by LTC will be made by electronic transfer or other mutually agreed method to an account designated by Contractor. Contractor shall provide LTC with the necessary banking information to facilitate electronic transfer of funds to Contractor's designated bank account. Any changes in Contractor's banking information or payment instructions shall be submitted in accordance with **Article 18.1**. LTC shall not be held liable or responsible for errors or delays resulting from incorrect or delayed submission of changes in banking instructions.

5.2 **HST**

- (a) In the absence of a valid election pursuant to s. 156 of the Excise Tax Act, LTC shall pay the Contractor HST, in accordance with the Excise Tax Act.

- (b) The Contractor shall provide, at all times when any HST is required to be collected, such documents and particulars relating to the supply as may be required by LTC to substantiate a claim for any input tax credits as may be permitted pursuant to the Excise Tax Act. Without limiting the foregoing, the Contractor, as required, shall include on all invoices issued, pursuant to this **Article 5**, all of the following particulars:
 - (i) its HST registration number;
 - (ii) the subtotal of all taxable supplies;
 - (iii) the applicable HST rate(s) and the amount of HST charged on such taxable supplies; and
 - (iv) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.
- (c) For the purposes of this Agreement, an amount shall not be included in a reimbursable amount to the extent that it is a Tax that is refundable or otherwise recoverable (including HST).

ARTICLE 6
TAXES

6.1 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. Nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.
- (b) HST - 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 will be applicable, such Taxes will be in addition to all such amounts and will 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 will 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 5.2(b)**; 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 co-operate with such other Party to assist it in claiming, such input tax credit.
- (c) Changes in Taxes - Any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (d) Income Taxes and HST - For greater certainty:
- (i) LTC is solely responsible for the payment of income taxes and HST payable by LTC; and
 - (ii) Contractor is solely responsible for the payment of income taxes and HST payable by Contractor.

6.2 **Tax Indemnity**

Each Party (in this **Section 6.2** 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 this **Article 6** 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 6.1(b)**, each Party will be liable for and defend, protect, release, indemnify and hold each other Party harmless from and against:

- (a) any and all Taxes imposed by any Authorized Authority on the other Parties in respect of this Agreement, and any and all Claims including payment of Taxes that may be brought against or suffered by the other Parties or that the other Parties 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) that may be brought against or suffered by the other Parties or that the other Parties 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.

**ARTICLE 7
INFORMATION, ACCESS AND REPORTING**

7.1 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 will be maintained in accordance with Good Utility Practice, and Canadian GAAP and as required by Applicable Law and the applicable provisions of the LTA Agreements. Records containing information reasonably contemplated to be useful throughout the Term, including major maintenance records, life cycle management records and design and commissioning records, will be maintained for the Term; all other documents will be retained for at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Party, and in accordance with the requirements of the LTA Agreements, as applicable, the Financing Parties and the Independent Engineer, 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 Party, the Financing Parties or the Independent Engineer, as applicable, to comply with its obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement and the applicable provisions of the LTA Agreements. Either Party, and in accordance with the requirements of the LTA Agreements, the Financing Parties or the Independent Engineer, as applicable, 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 any confidentiality requirements. Each Party will 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.

7.2 Access and Information

LTC and Contractor, and in accordance with the requirements of the LTA Agreements, as applicable, any of the Financing Parties and the Independent Engineer will each have the right, from the Effective Date through to the end of the Term, upon reasonable advance Notice to the other Party, to access all LTA sites and any other sites at which the Services are performed at all reasonable times for the sole purpose of examining the LTA or the conduct of the Services in connection with the performance of the respective obligations of the Parties under this Agreement and the applicable provisions of the LTA Agreements, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access will not unreasonably interfere with the activities at the LTA and will not compromise the safety of persons or property. While accessing the LTA, all Representatives of the Parties or any of the Financing Parties or the Independent Engineer shall follow all rules and procedures established by Party owning such facilities 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 LTC or any of the Financing Parties or the Independent Engineer will not relieve the Contractor of any of its obligations under this Agreement. No default will be waived or deemed to have been waived solely by any inspection by or on behalf of a Party or any of the Financing Parties or the Independent Engineer. In no event will any inspection by a Party hereunder or by any of the Financing Parties or the Independent Engineer be a

representation that there has been or will be compliance with this Agreement, the applicable provisions of the LTA Agreements and Applicable Law.

7.3 Restriction

In no circumstances will Contractor permit Marketing Personnel to have access to any of the information or facilities referred to in **Section 7.1** or **7.2** without the prior written consent of the affected Party; provided however that this restriction does not apply to publicly-available information.

**ARTICLE 8
FORCE MAJEURE**

8.1 Force Majeure

Other than an obligation to pay or spend money, 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 9
INSURANCE**

9.1 LTC Insurance Obligations

LTC covenants to Contractor that it shall comply with all obligations imposed on it to insure, as set forth in the LTA Agreements including Article 12 of the GIA.

9.2 Workers' Compensation

Contractor shall pay all assessments due under the *Workplace Health, Safety and Compensation Act* (NL). At the beginning of each calendar year, Contractor shall obtain and deliver to LTC a certificate or certificates establishing that it is in good standing with the Workplace Health, Safety and Compensation Commission of NL.

9.3 Liability Insurance

Contractor shall procure and maintain commercial general liability insurance including sudden and accidental pollution coverage. The insurance policy shall have a limit of not less than \$5,000,000.00 for any one occurrence to cover property damage or loss, bodily injury and loss of life arising directly or indirectly from the provision of Services by Contractor. Any such policy shall include LTC as an insured.

9.4 Automobile Insurance

Contractor shall procure and maintain automobile liability insurance. The insurance policy shall have a limit of not less than \$5,000,000.00 for any one occurrence to cover property damage or loss, bodily injury and loss of life arising from the operation of owned or non-owned

automobiles or mobile equipment resulting directly or indirectly from the provision of Services by Contractor.

9.5 Failure to Maintain Insurance/Deductibles

All specified insurance coverage shall be maintained by Contractor in full force for the term of this Agreement. Contractor will be responsible for payment of all deductibles applicable to all insurance policies specified in **Sections 9.3** and **9.4**. LTC shall reimburse Contractor for such deductibles.

9.6 Corporate Policies

It is understood and agreed that Contractor may provide the coverage referenced in this Agreement through policies covering other assets and/or operations operated by Contractor as long as any endorsement in respect of such policies in favour of any of the Financing Parties required to be made pursuant to the requirements of the MF/LTA Project Finance Documents is clearly set out.

**ARTICLE 10
TERM AND TERMINATION**

10.1 Term

The term of this Agreement (the “**Term**”) commences on the Effective Date and will terminate in accordance with **Section 10.2**.

10.2 Termination

This Agreement will terminate on the earliest to occur of any of the following events:

- (a) the expiry of the GIA Term;
- (b) written agreement of the Parties to terminate;

10.3 Extension of Term

Unless this Agreement has been earlier terminated and provided Contractor is not in default under this Agreement, no later than five years prior to the end of the Term, LTC may notify Contractor if it wishes to continue to receive Services subsequent to the Term. LTC and Contractor will then negotiate in good faith to agree upon the terms under which Contractor will provide and LTC will purchase Services after the Term, including the price to be paid by LTC therefor. Unless expressly provided in this Agreement, if no agreement is reached by LTC and Contractor, this Agreement shall not be extended and the matter shall not be referred to resolution pursuant to the Dispute Resolution Procedure.

10.4 Effect of Termination

- (a) When this Agreement terminates:
 - (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which will continue to be held in accordance with the provisions of **Sections 7.1** and **Article 14**; and
 - (ii) neither Party will have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 10.4**.
- (b) Notwithstanding the termination of this Agreement, the Parties will be bound by the terms of this Agreement in respect of:
 - (i) the final settlement of all accounts between the Parties;
 - (ii) the resolution of any issue on any Work Authorizations outstanding at the end of the Term;
 - (iii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the end of the Term;
 - (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; and
 - (v) any other obligations that survive pursuant to **Section 18.13**.

ARTICLE 11 DEFAULT AND REMEDIES

11.1 LTC Events of Default

Except to the extent excused by Force Majeure, the occurrence of one or more of the following events will 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 10 days after the receipt of Notice from Contractor 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 11.1(a)**, 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 Contractor, 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 Contractor, as applicable;

- (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; or
- (e) any Insolvency Event occurs with respect to LTC.

11.2 Contractor 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) Contractor will 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 Contractor 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 11.2** and **Article 13**, Contractor may recover all Losses suffered by them 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 Contractor, as applicable, to recover any amounts owed to them by LTC under this Agreement.

11.3 Contractor Events of Default

Except to the extent excused by a Force Majeure, the occurrence of one or more of the following events will constitute a default by Contractor under this Agreement (a “**Contractor Default**”):

- (a) Contractor 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 10 days after the receipt of Notice from LTC that such amount is due and owing;

- (b) Contractor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 11.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Contractor of Notice thereof from LTC, unless the cure reasonably requires a longer period of time and Contractor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by LTC;
- (c) any representation or warranty made by Contractor in this Agreement is false or misleading in any material respect;
- (d) Contractor 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 Contractor.

11.4 **LTC Remedies upon a Contractor Default**

- (a) General - Upon the occurrence of a Contractor 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 will 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 up to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such Claims; 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 11.4** and **Article 13**, LTC may recover all Losses suffered by them that result from a Contractor Default up to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such Losses, 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, as applicable, to recover any amounts owed to them by Contractor under this Agreement.
- (c) Gross Negligence, Wilful Misconduct and Fraud – Notwithstanding anything contained in this **Section 11.4**, where a Contractor Default constitutes gross negligence, willful misconduct or fraud by Contractor, recovery by LTC shall not be limited to the maximum amount of \$10,000.00.

11.5 **Equitable Relief**

Nothing in this **Article 11** will limit or prevent either Party from seeking equitable relief, including specific performance or a declaration to enforce the other Party's obligations under this Agreement. In the case of a monetary award in equity against Contractor, other than monetary award resulting from instances of gross negligence, willful misconduct or fraud by Contractor, such award shall be limited to a maximum amount of \$10,000.00, plus amounts Contractor receives from third parties or Subcontractors attributable to the Losses giving rise to the award.

ARTICLE 12
LIABILITY AND INDEMNITY

12.1 **LTC Indemnities**

LTC shall indemnify, defend, reimburse, release and save harmless Contractor and its Representatives, and the successors and permitted assigns of each of them, (collectively, the "**Contractor Group**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Contractor Group by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of:

- (a) any inaccuracy or breach of any representation or warranty made by LTC, as applicable, in this Agreement or any other document or instrument delivered by such Party pursuant to this Agreement, in any material respect;
- (b) any breach or failure by LTC, as applicable, to perform or comply with any agreement, covenant or obligation of such Party in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
- (c) any negligence, gross negligence, wilful misconduct or fraud by or on behalf of LTC, as applicable, occurring in connection with, incidental to or resulting from such Party's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.

12.2 **Contractor Indemnity**

Contractor shall indemnify, defend, reimburse, release and save harmless LTC and its respective Representatives, and the successors and permitted assigns of each of them, (collectively, the "**LTA Group**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the LTA Group by or in favour of a third party to the proportionate extent that the Claim is based upon:

- (a) any inaccuracy or breach of any representation or warranty made by Contractor in this Agreement or any other document or instrument delivered pursuant to this Agreement, in any material respect;

- (b) any breach or failure to perform or comply with any agreement, covenant or obligation of Contractor in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
- (c) any negligence, gross negligence, wilful misconduct or fraud by or on behalf of Contractor occurring in connection with, incidental to or resulting from Contractor's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.

Notwithstanding the foregoing, except for instances of gross negligence, willful misconduct or fraud by Contractor, Contractor's duty to indemnify, defend, reimburse, release and save harmless under this **Section 12.2** shall be limited to a maximum amount of \$10,000.00 in aggregate plus amounts Contractor receives from third parties or Subcontractors attributable to such Claims.

12.3 Own Property Damage

For the avoidance of doubt, it is the Parties' intent that, subject to any right a Party may have to seek compensation from a third party that caused the Loss or from insurance, each Party will be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements on the site of the LTA or any other site where the Services are performed (including, with respect to any member of the LTA Group, such property of such member of the LTA Group, and, with respect to any member of the Contractor Group, such property of such member of the Contractor Group), howsoever incurred, including Losses resulting from the provision of any Services or the action or inaction of another Party or its Affiliates or Representatives.

12.4 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 **Section 12.1** or **12.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 12.4**.
- (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 will describe the Claim in reasonable detail and will 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 provide Notice to the Indemnitor hereunder will not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (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 will 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 12.4** 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 has received such Notice of election, it will be free to defend such Third Party Claim in any reasonable manner it sees 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 will 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 **Section 12.4(i)**.

- (f) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent will not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise 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 will 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 will 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 will 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 will 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 will 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 both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party will have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 12.4** will 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 will 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.

12.5 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 13
LIMITATION OF DAMAGES**

13.1 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 12** and **Article 13** of this Agreement will apply to any and all Claims.

13.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event will a Party be liable to another Party for a decline in market capitalization, 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 Services, in favour of a third party, will be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 13.2**, lost revenues or profits will be considered to be consequential, incidental or indirect damages.

13.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim by a Party will be calculated or determined in accordance with Applicable Law, and will 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 14
CONFIDENTIALITY**

14.1 Obligations of Confidentiality

The provisions of **Schedule 5** will apply to Confidential Information.

14.2 Disclosure of Agreement

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

**ARTICLE 15
ASSIGNMENT**

15.1 Restriction on Assignment

No Party shall assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing, without the prior written consent of the other Party to this Agreement, which consent may be arbitrarily withheld.

**ARTICLE 16
REPRESENTATIONS AND WARRANTIES**

16.1 LTC Representations and Warranties

LTC represents and warrants to Contractor that, as of the Effective Date:

- (a) it is duly organized 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 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 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 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.

16.2 Contractor Representations and Warranties

Contractor 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 Contractor 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 Contractor for Contractor'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 Contractor'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 17
DISPUTE RESOLUTION

17.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 4** (the “**Dispute Resolution Procedure**”).
- (b) 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 17**, without prejudice to either Party’s rights pursuant to this Agreement.
- (c) 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.

17.2 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 will describe the Claim in reasonable detail and will 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 notify the Recipient Party will 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 to so notify promptly.
- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party will 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 18
MISCELLANEOUS PROVISIONS

18.1 Notices

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

To LTC:

Labrador Transmission Corporation
500 Columbus Drive
P.O. Box 15100, Station A
St. John's, NL A1B 0M6

Attention: General Counsel
E-mail: NalcorGeneralCounsel@nalcorenergy.com
Fax: (709) 737-1782

- and -

Attention: Walter Parsons, LTC Representative
E-mail: WalterParsons@nalcorenergy.com

To Contractor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800, Station A
St. John's, NL A1B 0C9

Attention: General Counsel
E-mail: NalcorGeneralCounsel@nalcorenergy.com
Fax: (709) 737-1782

- and -

Attention: Gerard Dunphy, Contractor Representative
E-mail: GDunphy@nalcorenergy.com

Such Notice will (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 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 will be deemed to have been given or made on the next Business Day. Either Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Party.

18.2 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.

18.3 Counterparts

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

18.4 Expenses of Parties

Except as otherwise provided herein, each Party will 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.

18.5 Announcements

No announcement with respect to this Agreement will be made by either Party without the prior approval of the other Party. The foregoing will not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Party before making any such announcement and gives due consideration to the views of the other Party with respect thereto. Both Parties shall use reasonable efforts to agree on the text of any proposed announcement.

18.6 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, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the matters set forth herein will be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting either Party as the agent or legal representative of the other Party for any purpose nor to permit either Party to enter into agreements or incur any obligations for or on behalf of the other Party.

18.7 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.

18.8 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 will 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.

18.9 Time of the Essence

Time will be of the essence.

18.10 Amendments

No amendment or modification to this Agreement will be effective unless it is in writing and signed by each Party.

18.11 No Waiver

Any failure or delay of either 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 will not affect the validity of this Agreement, or any part hereof, and will 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 will be limited to its express terms and will not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

18.12 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 will acquire or have any right, remedy or claim under or by virtue of this Agreement.

18.13 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.

18.14 Successors and Assigns

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

18.15 Crown not an Affiliate

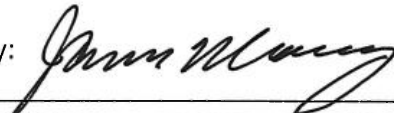
The NL Crown is deemed to not be an Affiliate of any Party hereto.

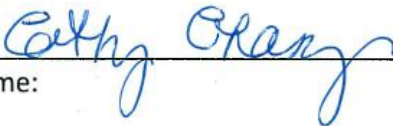
[Remainder of this page intentionally left blank.]


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

Executed and delivered by Labrador
Transmission Corporation, in the presence of:

LABRADOR TRANSMISSION CORPORATION

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



Name: _____

By: 
Name: *Walter Parsons*
Title: *VP Transmission and Community Affairs*


We have authority to bind the corporation.

Executed and delivered by Nalcor Energy, in
the presence of:

NALCOR ENERGY

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


Name: _____

By: 
Name: **Peter A. Hickman**
Title: **VP General Counsel**
& Corp. Secretary

We have authority to bind the corporation.

**LABRADOR TRANSMISSION ASSETS
MASTER SERVICES AGREEMENT**

SCHEDULE 1

LTA AGREEMENTS

SCHEDULE 1
LTA AGREEMENTS

GIA

Muskrat Falls PPA

Multi-Party Pooling Agreement

LTC LIL Asset Interconnection Agreement

MF/LTA Project Finance Agreement, MF/LTA Master Definitions Agreement and the other MF/LTA Project Finance Documents

NLH (NLSO), MFC and LTC General Security Agreement

MFC Step-in Agreement

LTC Step-in Agreement

LABRADOR TRANSMISSION ASSETS
MASTER SERVICES AGREEMENT

SCHEDULE 2

OPERATING AND MAINTENANCE SERVICES

SCHEDULE 2
OPERATING AND MAINTENANCE SERVICES

LTC Operating and Maintenance Services

All activities and undertakings performed by or on behalf of LTC that are required (considering the remaining service life of the LTA) to operate, maintain and sustain the LTA in accordance with the requirements of Good Utility Practice, including but not limited to:

- Research, develop and execute all asset maintenance programs including utilization of a computerized maintenance management system
- Establishing and executing emergency response plans
- Establishing and maintaining inventory facilities and systems for procurement of critical parts, materials, consumables, tools, etc.
- Training, mentoring and oversight for personnel
- Management of Crown titles and land easements
- Vegetation management (surveillance, spray and cutting)
- Telecommunications systems maintenance
- Establishing and managing service contracts and agreements with Affiliates and third parties
- Establishing and maintaining fire protection services and systems (fire protection panels, alarms, suppression systems and arrangements for regional/provincial fire services)
- Transportation of equipment to/from work sites
- Helicopter services (transport of materials and workers)
- Provision of gases (hardware, equipment and supply)
- Provision of crane services
- Oil removal and vacuum truck services
- Obtaining and establishing utility services (electricity and wired and mobile telephones)
- Snow clearing (sites, parking lots, walkways, doors and ice control)
- Trash removal
- Janitorial services
- Pest control
- Maintaining Comprehensive data bases regarding equipment inventory, maintenance procedures / standards and maintenance schedules

**LABRADOR TRANSMISSION ASSETS
MASTER SERVICES AGREEMENT**

SCHEDULE 3

BUSINESS SUPPORT AND TECHNICAL SERVICES

SCHEDULE 3
BUSINESS SUPPORT AND TECHNICAL SERVICES

Contractor may provide the following Services to LTC, along with any Services covered by LTC approved Work Authorization:

1. Administrative Services

Contractor's invoice to LTC will include a monthly administration fee which covers the following Services:

1.1 Human Resources

- (a) administration and coordination of all employee related services including payroll, recruitment, employee benefit programs, pensions, training and the rewards and recognition program as well as the maintenance of the human resources database; and
- (b) administer the performance appraisal system and salary surveys.

1.2 Safety and Health

- (a) provide occupational health services including coordinating efforts with regard to employee safety as well as wellness, disability and sick leave management, and medical screening.

1.3 Information Systems

- (a) provide assistance and support in the areas of software applications, planning and integration and business solutions;
- (b) provide maintenance, administration services and technical support in relation to the company wide computer infrastructure and network.

1.4 Facility Services

- (a) provide office accommodations utilized to support LTC;
- (b) provide telephone infrastructure and related services.

For greater certainty, the administration fee shall not include costs associated with the provision of these Services which are otherwise recovered by Contractor, based on actual hours worked in support of LTC; charged at the direct labour rate. All labour will require assignment of a work order to track time charged to LTC.

2. Financial Reporting Services

- (a) engagement and oversight of the financial reporting processes;
- (b) conduct accounting research as required;
- (c) resolve accounting treatment issues as they arise;
- (d) support ad-hoc initiatives and analysis in liaison with LTC in response to information requests;
- (e) provide guidance and direction on corporate policy associated with financial reporting;

- (f) provide guidance and direction with International financial reporting standards compliance;
- (g) provide direction and review required disclosures for the annual report;
- (h) perform accounting research, as required; and
- (i) update and maintain, in the Nalcor Enterprise Resource Planning systems, the general ledger chart of accounts, in collaboration with LTC.

3. Accounting Services

3.1 Accounts Payable

- (a) control and co-ordinate processing of all LTC invoices;
- (b) data entry, both manual and electronic upload, of LTC invoices;
- (c) downloading and processing of purchase card transactions; and
- (d) processing of payments by both cheque and electronic funds transfer.

3.2 Accounts Receivable

- (a) manage, control and record accounts receivable activities;
- (b) data input of accounts receivable billing requests and generation of invoices;
- (c) receipt of payments, clearing and reconciliation of outstanding receivables;
- (d) maintain the accounts receivable sub-ledger.

3.3 General Ledger Accounting

- (a) electronic upload of LTC general journal entries;
- (b) reconcile and analyze bank statements including the follow up and resolution of outstanding items;
- (c) reconcile and analyze general ledger accounts.

3.4 Capital Asset Accounting

Provide all support necessary to manage, control and record capital asset activities.

4. Investment Evaluation & Financial Planning

- (a) facilitate the production, review and distribution of long-term financial projections;
- (b) modeling and analysis of data and financial consulting related to various short and long term decisions;
- (c) participate in LTC contract due diligence process, as required;
- (d) support the review of LTC projections being performed by external parties; responding to both internal and external inquiries and requests for information related to Investment Evaluation department
- (e) provide support and assistance with the execution and administration of requirements under commercial and financing agreements; and
- (f) any other tasks and support as pre-approved by LTC.

5. Taxation Services

- (a) interpret and ensure compliance with various international, federal, provincial and municipal tax laws;

- (b) making representation to authorities in tax matters where necessary;
- (c) providing training, advice and direction to LTC personnel on new and existing tax laws;
- (d) preparing income, non-resident withholding and commodity tax filings and returns related to LTC;
- (e) ensuring payment of all tax liabilities including the preparation of related journal entries; and
- (f) perform periodic audits to ensure that commodity tax and non-resident withholding taxes have been appropriately recorded.

6. Treasury and Risk Management

6.1 Banking and Cash Management

- (a) identify banking needs and obtain all required banking services;
- (b) resolve any and all operational issues encountered with day to day banking services;
- (c) day-to-day cash management;
- (d) managing receipts;
- (e) processing cheques, electronic funds transfers (EFT) and wire transfers;
- (f) purchasing of foreign currencies as required; and
- (g) interface with the Contractor financial reporting team and LTC to ensure appropriate accounting treatment for all cash management activities and associated balances.

6.2 Financial Risk Management

- (a) perform creditworthiness reviews of bidders in accordance with Power Supply Policies;
- (b) participate in LTC contract due diligence process, as required;
- (c) purchase and manage hedging instruments (e.g. forwards, commodity price swaps and options) as required to support any financial risk management strategies devised by LTC; and
- (d) interface with the Contractor financial reporting team and LTC to ensure appropriate accounting treatment for any hedging instruments put in place.

6.3 Risk and Insurance

- (a) provide services related to the placement, administration, risk control and risk financing of the corporate insurance program;
- (b) coordinate preparation and resolution of all insurance claims; and
- (c) provide support through participation in the due diligence process.

7. Legal

- (a) provision of legal services including corporate secretary services, regulatory work, commercial negotiations, property acquisitions, litigation matters;
- (b) review of commercial agreements and templates, including due diligence and cold eyes review LTC contracts; and
- (c) Any other legal services required in connection with the activities of LTC.

8. Internal Audit

- (a) provide auditing services as determined in conjunction with LTC management; and
- (b) provide assistance to the external auditors in performing procedures related to the annual year-end audit.

9. Environmental Services

- (a) labor support for specific environmental initiatives and regulatory compliance; and
- (b) corporate environmental services in accordance with Good Utility Practice.

10. Labour Relations

Provide labor relations support on an ad hoc basis at the request of LTC.

11. Engineering Services

- (a) Acceptance Testing - during the commissioning process for the LTA, act as LTC representative during acceptance testing activities to verify and ensure all appropriate testing has been satisfactorily completed.
- (b) Provide support to design, construction, procurement (as necessary) and project management of operating and capital projects with regards to completion, improvements and operations of the LTA.
- (c) Provide support to engineering studies, technical investigations, technical specifications, construction and operation coordination and analysis to support sustained reliable operation of the LTA.

12. Communications

Provide stakeholder and community relations related communications provided that Canada has received prior notice of any such communications and has been consulted by the Contractor regarding the contents of same.

13. Administrator Services

Provide administrative services on behalf of Muskrat Falls/Labrador Transmission Asset Funding Trust in accordance with the Administration Agreements with Muskrat Falls/Labrador Transmission Asset Funding Trust.

14. Supply Chain & Procurement

Coordinate efforts related to procurement process activities including tendering, purchasing and contract administration.

15. Inventory Management

Provide all support necessary to manage, control, record and administer all LTC inventory activities.

16. Other

Contractor shall provide, directly or by Subcontract, such other professional services as may reasonably be required by LTC from time to time. Making application to or responding to Authorized Authorities, including those in respect of all necessary approvals for the performance of the Services as directed by LTC from time to time.

**LABRADOR TRANSMISSION ASSETS
MASTER SERVICES AGREEMENT**

SCHEDULE 4

DISPUTE RESOLUTION PROCEDURE

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**SCHEDULE 4
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 Party**” 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 Party's 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 the Party requesting a review under this **Section 3** by Notice to the other Party (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 Party 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 Party (the “**Notified Parties**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, 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 **Sections 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 both 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 the other 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 **Sections 6.3(a)** or **(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.

**APPENDIX A
TO
DISPUTE RESOLUTION PROCEDURE**

COMMERCIAL ARBITRATION CODE

Appendix A

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.

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

(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 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.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
 - (a) the party making the application furnishes proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of *Canada*; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code*; or
 - (b) the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or
 - (ii) the award is in conflict with the public policy of *Canada*.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of *Canada*, the party shall supply a duly certified translation thereof into such language.

ARTICLE 36
GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of *Canada*.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

**LABRADOR TRANSMISSION ASSETS
MASTER SERVICES AGREEMENT**

SCHEDULE 5

CONFIDENTIAL INFORMATION

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SCHEDULE 5
CONFIDENTIAL INFORMATION SCHEDULE

Section 1 Interpretation

1.1 Definitions

In this Schedule, unless otherwise defined herein, capitalized terms shall have the meaning set forth in the Articles of 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);

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

“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 7 - 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 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 Acknowledgements

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 The Parties and each of their 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 such Party and each of its 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 the other 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 other Party, as applicable. It is further acknowledged and agreed that each Party has represented to the other Party that the Confidential Information disclosed is treated consistently in a confidential manner by 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 Party or its 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 between the Party 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.

OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT made at St. John's in the Province of Newfoundland and Labrador dated as of the 19th day of December, 2018.

BETWEEN: **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 existing pursuant to the *Hydro Corporation Act, 2007*, being Chapter H-17 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown (hereinafter called "**Hydro**").

WHEREAS:

1. Labrador Island Link Limited Partnership (the "**Partnership**"), Muskrat Falls Corporation ("**MFC**") and Labrador Transmission Corporation ("**LTC**") are the owners of certain of the generation facilities and Transmission Facilities (as defined herein).
2. Nalcor entered into the following agreements, pursuant to which Nalcor agreed to, amongst other things, provide operation and maintenance services for the Transmission Facilities owned by the Partnership and LTC:
 - a. A Master Services Agreement with the Partnership and Labrador-Island Link Operating Corporation ("**Opco**") dated July 4, 2018 (the "**LIL MSA**").
 - b. A Master Services Agreement with LTC dated July 4, 2018, 2018 (the "**LTC MSA**").
3. Nalcor expects to enter into a master services agreement with MFC, pursuant to which Nalcor will agree to, amongst other things, provide operation and maintenance services for the generation facilities owned by MFC (the "**MFC MSA**").
4. At the request of Nalcor, and subject to the terms and conditions herein, Hydro has agreed to provide certain operation and maintenance services for the generation facilities and Transmission Facilities which Nalcor is required to provide, or will be required to provide, under the LIL MSA, the LTC MSA and the MFC MSA (collectively, the "**LCP MSAs**").

NOW THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

**ARTICLE 1
INTERPRETATION**

1.01 In this Agreement, wherever they occur and unless the context otherwise requires,

- (a) **"Agreement"** means this agreement, including all Schedules, as may be modified, amended, supplemented or restated by written agreement between the Parties.
- (b) **"Communication Repeater Sites and Equipment"** means:
 - (i) The three communication repeater sites located at Three Rock Cove, Hampden and White Hills, in NL, linking Communication Path A from Muskrat Falls, NL, to Soldiers Pond, NL, including all terminal, protection and control, and communication facilities installed for use in connection with such communication repeater sites.
 - (ii) Communication repeater equipment installed in various Hydro stations in NL to support Communication Path B from Muskrat Falls, NL, to Soldiers Pond, NL, including all terminal, protection and control, and communication facilities installed for use in connection with such communication repeater equipment.
- (c) **"Default"** shall have the meaning set out in Article 8.03.
- (d) **"Designate"** shall have the meaning set out in Article 4.04.
- (e) **"Effective Date"** shall be the date set forth at the commencement of this Agreement.
- (f) **"Force Majeure"** means an event, condition or circumstance (each, an **"event"**) beyond the reasonable control 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 hereunder. Provided that the foregoing conditions are met, **"Force Majeure"** may include,
 - (i) 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, an epidemic declared by an authorized authority having jurisdiction, explosion, earthquake or lightning.

- (ii) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority.
- (iii) a strike, lockout or other industrial disturbance.
- (iv) an accident causing material physical damage to, or materially impairing the operation of, or access to, the NL Transmission System.
- (v) the inability to obtain, the revocation, failure to renew or other inability to maintain in force, or the amendment of any order, permit, license, certificate or authorization from any authorized authority, unless such inability, revocation, non-renewal, other inability to maintain in force, 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, license, certificate or authorization;

provided that the following shall not be considered events of Force Majeure:

- I. an event which would otherwise be considered an event of Force Majeure which does not continue for a period of more than one day.
 - II. lack of finances or changes in economic circumstances of a Party.
 - III. any delay in the settlement of any Dispute.
- (g) **“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. 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.

- (h) **"HVdc Line"** means the +/- 350 kv HVdc transmission line linking the converter station located at Muskrat Falls, Labrador, to the converter station located at Soldiers Pond, NL, including all terminal and communication facilities installed for use in connection with such transmission line, but for greater certainty, excluding the HVdc converter building located at Muskrat Falls, Labrador, and the HVdc converter building located at Soldiers Pond, NL.
- (i) **"Hydro"** means Newfoundland and Labrador Hydro.
- (j) **"Hydro Full Labour Costs"** means the full cost to Hydro for employee labour, which cost shall be calculated in accordance with Nalcor's Intercompany Transaction Costing Guidelines. For greater certainty, Hydro Full Labour Costs shall not include any profit element. Hydro Full Labour Costs may be subject to an annual adjustment.
- (k) **"Hydro Group"** shall have the meaning set out in Article 8.01.
- (l) **"Insolvency Event"** means, in relation to any Party, the occurrence of one or more of the following:
 - (i) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party.
 - (ii) 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.
 - (iii) 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.

- (iv) 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.
- (v) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due.
- (m) “**LCP MSAs**” means, collectively, the LIL MSA, the LTC MSA and the MFC MSA.
- (n) “**LIL MSA**” means the Master Services Agreement between Nalcor, the Partnership and Opco dated July 4, 2018, as may be amended from time to time.
- (o) “**LIL Remote Facilities**” means the two (2) +/- 350 kv HVdc transition compounds owned by the Partnership and located in Forteau, Labrador and Shoal Cove, NL linking the HVdc Line and associated subsea cables from Muskrat Falls, Labrador, to Soldiers Pond, NL, including all terminal, protection and control, and communication facilities installed for use in connection with such transition compounds.
- (p) “**LTC**” means Labrador Transmission Corporation.
- (q) “**LTC MSA**” means the Master Services Agreement between Nalcor and LTC dated July 4, 2018, as may be amended from time to time.
- (r) “**NL**” means the Province of Newfoundland and Labrador.

- (s) **"NL SO"** means Hydro acting in its capacity as the Newfoundland and Labrador System Operator, being the system operations department of Hydro responsible for the safe and reliable operation of the NL Transmission System, or a functionally separate division of Hydro performing this function, or any successor as applicable.
- (t) **"NL Transmission System"** means the transmission facilities located in NL, operating at a voltage level of 230 kV or higher, including, without limitation, the Labrador-Island Link, the Labrador Transmission Assets and the Island Interconnected System, but excluding the high voltage direct current portion of the Maritime Link transmission line owned by NSP Maritime Link Incorporated.
- (u) **"Nalcor"** means Nalcor Energy.
- (v) **"Nalcor's Intercompany Transaction Costing Guidelines"** means Nalcor's intercompany transaction costing guidelines dated July 2017, as may be amended from time to time.
- (w) **"Nalcor Group"** shall have the meaning set out in Article 8.02.
- (x) **"MFC"** means Muskrat Falls Corporation.
- (y) **"MFC MSA"** means the Master Services Agreement to be entered into between Nalcor and MFC, as may be amended from time to time.
- (z) **"Opco"** means Labrador-Island Link Operating Corporation.
- (aa) **"Parties"** means the parties to this Agreement, and **"Party"** means one of them, as determined by context.
- (bb) **"Partnership"** means Labrador-Island Link Limited Partnership.
- (cc) **"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.
- (dd) **"Services"** means the operation and maintenance services to be provided by Hydro for Nalcor, as more particularly described in Article 1.
- (ee) **"Soldiers Pond Terminal Station"** means the 230 kV terminal station owned by the Partnership and located at Soldiers Pond, NL, and all associated facilities, including, without limitation, all terminal, protection, control and communication facilities used in

conjunction with such terminal station, but for greater certainty, shall not include the following:

- (i) The synchronous condenser building and three (3) synchronous condensing machines owned by the Partnership and located at Soldiers Pond, NL, including all terminals, auxiliary systems, protection and control facilities, and communication facilities installed for use in connection with such synchronous condenser building and synchronous condensing machines.
 - (ii) The HVdc converter building owned by the Partnership and located at Soldiers Pond, NL, including all terminals, auxiliary systems, protection and control facilities, and communication facilities installed for use in connection with such HVdc converter building.
- (ff) **“Supporting Material”** shall have the meaning set out in Article 6.03.
- (gg) **“Term”** shall have the meaning set out in Article 3.
- (hh) **“Terminal Station Building”** means the AC relay building owned by the Partnership and located at Soldiers Pond, NL, and all associated equipment and auxiliary systems used to facilitate the transmission of power, including, without limitation, telecommunication equipment, battery banks, charges, switchgear, and fire protection equipment.
- (ii) **“Transmission Facilities”** means the following:
- (i) The Soldiers Pond Terminal Station.
 - (ii) The Terminal Station Building.
 - (iii) LIL Remote Facilities.
 - (iv) The HVdc Line.
 - (v) The Communication Repeater Sites and Equipment.
- 1.02 In this Agreement all references to dollar amounts and all references to any other money amounts are, unless specifically otherwise provided, expressed in terms of coin or currency of Canada which at the time of payment or determination shall be legal tender herein for the payment of public and private debts.
- 1.03 Words in this Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.

- 1.04 Where a word is defined anywhere in this Agreement, other parts of speech and tenses of the same word have corresponding meanings.
- 1.05 Wherever in this Agreement a number of days is prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last. Whenever this Agreement requires any notice to be given or a request to be made on a Saturday, Sunday or holiday recognized by either of the Parties in running their business, such notice or request may be given or made on the first business day occurring thereafter, and whenever in this Agreement the time within which any right will lapse or expire shall terminate on a Saturday, Sunday or holiday recognized by either of the Parties in running their business, such time will continue to run until the next succeeding business day.
- 1.06 The headings of all the articles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.07 Any reference in this Agreement to an article, clause, subclause, section, subsection or paragraph shall, unless the context otherwise specifically requires, be taken as a reference to an article, clause, subclause, section, subsection or paragraph of this Agreement.
- 1.08 This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument.
- 1.09 The Parties agree that Nalcor is entering into this Agreement as principal, and not as an agent for any other Person.

ARTICLE 2
OBJECTS

- 2.01 Hydro shall perform operation and maintenance services in relation to the generation facilities owned by MFC and the Transmission Facilities as directed by Nalcor, which operation and maintenance services may include, but shall not be limited to, the following:
 - (a) supervision of the Transmission Facilities including, but not limited to, the gathering of metering data and the keeping of logs and response to alarms and abnormal conditions;
 - (b) operation of the Transmission Facilities in accordance with the operating procedures developed or provided by Nalcor or the NLSO;
 - (c) routine inspection of the Transmission Facilities carried out in such a manner and with such frequency as shall be satisfactory to Nalcor;

- (d) routine maintenance and repairs of the Transmission Facilities, in accordance with Nalcor's maintenance plan, which may be amended from time to time;
- (e) the purchase and warehousing of spare parts and tools reasonably required for the purposes of such maintenance and repairs, provided however that such purchase of spare parts and tools shall be carried out in accordance with all other provisions of this Agreement;
- (f) all such additional operation and maintenance services approved by Nalcor, including, but not limited to, replacement and repair of the Transmission Facilities or any part thereof, as is reasonably necessary to keep the Transmission Facilities in good working order and condition;
- (g) any additional operation and maintenance services requested by Nalcor in writing and agreed upon by Hydro, including, without limitation, operation and maintenance services related to the generation facilities owned by MFC, and other operation and maintenance services related to the Transmission Facilities;

(collectively, the "Services").

**ARTICLE 3
TERM**

- 3.01 The Term of this Agreement shall commence on the Effective Date and terminate on the earlier of: (i) termination of the LCP MSAs; (ii) written agreement of the Parties to terminate; or (iii) termination in accordance with Article 3.03 ("Term").
- 3.02 The Term may be extended by mutual agreement of the Parties hereto, in accordance with the requirements of Article 10.02.
- 3.03 Either Party may terminate this Agreement at any time during the Term or any extension thereof by providing one (1) year prior written notice to the other Party of its intention to terminate.
- 3.04 Nalcor shall provide Hydro immediate written notice of any agreement to terminate any of the LCP MSAs, or other purported termination of any of the LCP MSAs by any of the parties thereto.

**ARTICLE 4
PERFORMANCE**

- 4.01 Hydro shall perform the Services in accordance with Good Utility Practice and the terms and conditions of this Agreement.
- 4.02 Nalcor shall provide to Hydro in a timely manner all documentation within its care and control which is necessary for Hydro to perform the Services, including, but not limited to, operating and maintenance procedures to which Hydro must adhere, Nalcor's approved annual maintenance plan, Nalcor's approved annual materials budget, and any other instructions necessary for Hydro to perform the Services.
- 4.03 Nalcor represents and warrants to Hydro that, pursuant to the provisions of the LCP MSAs, it is authorized, or will be authorized prior to requesting completion of the relevant Services, to operate and perform maintenance on the generation facilities owned by MFC and the Transmission Facilities owned by the Partnership and LTC, and that it is authorized, or will be authorized, to subcontract the Services to Hydro.
- 4.04 The Parties to this Agreement hereby agree that, pursuant to this Article 4, and to Article 5, within thirty days after the execution and delivery of this Agreement, each Party will designate a Person (hereinafter called the "Designate") who shall, together with the Person so designated by the other Party, jointly prepare a work scope prescribing details of the Services to be furnished by Hydro pursuant to this Agreement, and the Designates may jointly modify the work scope from time to time as necessary.

**ARTICLE 5
LIASON**

- 5.01 Each Party's Designate shall act on its behalf in the administration of this Agreement and shall have authority to act for and make decisions on behalf of the designating Party both with respect to foreseeable situations and emergencies that may arise from time to time.
- 5.02 Either of the Parties may cancel the appointment and designation of any Person made pursuant to Article 4.04 and substitute another Designate by notice to the other Party.

**ARTICLE 6
CONSIDERATION**

- 6.01 The consideration to be paid by Nalcor to Hydro for the Services shall be the following:
- (a) In the case of labour, Hydro's Full Labour Costs.

- (b) In the case of vehicles, material and supplies used directly in performing the Services, costs calculated on the basis of full recovery of costs incurred by Hydro. For greater certainty, costs payable under this Article 6.01(b) shall not include any profit element whatsoever.
 - (c) Should it be identified that Hydro will incur incremental operating costs directly related to, or as a result of, the performance of the Services, Hydro will prepare a justification, and obtain written pre-approval from Nalcor for reimbursement of such additional incremental operating costs.
- 6.02 Hydro shall render an account monthly, in a form acceptable to Nalcor, for expenditures chargeable to Nalcor and associated with the performances of the Services in the preceding month. Monthly accounts shall be detailed in accordance with Nalcor's Intercompany Transaction Costing Guidelines.
- 6.03 Upon request, Hydro shall provide Nalcor with all relevant supporting documentation as Nalcor may reasonably require to verify the accuracy of the fees, charges and third party charges included in a monthly account rendered in accordance with Article 6.02, along with a summary sheet cross referenced to all supporting documentation ("**Supporting Material**"). Nalcor shall not be responsible or liable for any claim arising from delays in payment due to Hydro not providing complete Supporting Material, satisfactory to Nalcor.
- 6.04 All accounts received by Nalcor from Hydro shall be paid in full within thirty days after the date on which such account was rendered. In the event of dispute:
 - (a) Nalcor shall notify Hydro of any item disputed and shall specify the reason for such dispute.
 - (b) Hydro shall continue to fulfill its obligation to proceed with all due diligence to provide the Services, notwithstanding the dispute.
 - (c) Once the disputed amounts are resolved, Hydro shall pay any amount determined to be owing to Nalcor in accordance with this Article 6.
- 6.05 Notwithstanding anything else in this Agreement, Hydro agrees that it shall act reasonably to limit overtime hours worked by its employees in the performance of the Services.
- 6.06 Each Party shall keep and maintain complete and accurate records required by either of them for the purpose of proper administration of this Agreement. Each Party shall provide or cause to be provided to the other Party 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 by the other Party for purposes of verifying amounts invoiced pursuant to this Article 6,

or other purposes related to the proper administration of this Agreement. For greater certainty, to the extent that records or data are kept and maintained by the Partnership, and Nalcor has access to such records pursuant to the provisions of the LIL MSA, Nalcor shall provide Hydro access to such records or data for purposes related to the proper administration of this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records or data provided that those employees are, or the auditor is, bound by any confidentiality requirements. Each Party will 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.

ARTICLE 7
PARTS, TOOLS AND ACCESS

- 7.01 In order to enable Hydro to perform the Services with promptness and efficiency, Nalcor shall provide such spare parts and specialized tools requested by Hydro and reasonably required to perform the Services, as mutually determined by Nalcor and Hydro, and Hydro shall store such spare parts and specialized tools in a location mutually acceptable to Nalcor and Hydro.
- 7.02 Hydro shall be entitled at all times to use spare parts and specialized tools purchased by Nalcor and provided to Hydro pursuant to Article 7.01 in the course of performing the Services.
- 7.03 Hydro shall give notice in writing to Nalcor each time it considers that the stock of spare parts and specialized tools needs to be replenished.
- 7.04 Where practical, before purchasing tools, spare parts or materials, Hydro shall use, for the purposes of the Services, all of the usable tools, spare parts and materials heretofore or hereafter provided to it by Nalcor for such purposes.
- 7.05 Notwithstanding Articles 7.01 through 7.04, Nalcor shall provide Hydro an annual budget in relation to the performance of the Services, which annual budget shall identify an approved expenditure for tools, spare parts and materials required to perform the Services, and Hydro shall be permitted to order and obtain such tools, spare parts and materials which may be reasonably necessary to perform the Services, provided however that the cost of such tools, spare parts and materials do not exceed the approved expenditures outlined in the annual budget provided by Nalcor. Hydro shall notify Nalcor as soon as reasonably practical in the event that expenditures are likely to exceed those which are approved in the annual budget, and the Parties shall agree in writing regarding the process for purchasing further tools, spare parts and materials required to perform the Services.
- 7.06 To the extent that time reasonably permits, Hydro will inform Nalcor of all purchases of tools, spare parts and materials which it proposes to make pursuant to Article 7.05. In the event of loss of or damage to major individual components of the generation facilities owned by MFC or

the Transmission Facilities, Hydro shall inform Nalcor of the same, and Nalcor shall decide, in its sole discretion, whether such component should be repaired or replaced.

- 7.07 Upon the termination of this Agreement, Hydro shall return to Nalcor all tools, spare parts, equipment and materials furnished to it by Nalcor or otherwise obtained by Hydro pursuant to this Agreement for purposes of performing the Services.

**ARTICLE 8
INDEMINIFICATION AND LIMITATION OF DAMAGES**

- 8.01 Nalcor shall indemnify, defend, reimburse, release and save harmless Hydro and its directors, officers, employees, agents and the successors and permitted assigns of each of them, (collectively, the "**Hydro Group**") from and against, and as a separate and independent covenant agrees to be liable for, all claims that may be brought against any member of the Hydro Group by or in favour of a third party to the proportionate extent that the claim is based upon, in connection with, relating to or arising out of:
- (a) any inaccuracy or breach of any representation or warranty made by Nalcor in this Agreement or any other document or instrument delivered by Nalcor pursuant to this Agreement, in any material respect;
 - (b) any breach or failure by Nalcor to perform or comply with any agreement, covenant or obligation of Nalcor in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
 - (c) any negligence, gross negligence, wilful misconduct or fraud by or on behalf of Nalcor, occurring in connection with, incidental to or resulting from Nalcor's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.
- 8.02 Hydro shall indemnify, defend, reimburse, release and save harmless Nalcor and its directors, officers, employees, agents and the successors and permitted assigns of each of them, (collectively, the "**Nalcor Group**") from and against, and as a separate and independent covenant agrees to be liable for, all claims that may be brought against any member of the Nalcor Group by or in favour of a third party to the proportionate extent that the claim is based upon, in connection with, relating to or arising out of:
- (a) any inaccuracy or breach of any representation or warranty made by Hydro in this Agreement or any other document or instrument delivered by Hydro pursuant to this Agreement, in any material respect;
 - (b) any breach or failure by Hydro to perform or comply with any agreement, covenant or obligation of Hydro in this Agreement or any other document or instrument delivered pursuant to this Agreement; or

- (c) any negligence, gross negligence, willful misconduct or fraud by or on behalf of Hydro occurring in connection with, incidental to or resulting from Hydro's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.

Notwithstanding the foregoing, with the exception of instances of gross negligence, willful misconduct or fraud by or on behalf of Hydro, Hydro's duty to indemnify, defend, reimburse, release and save harmless under this Article 8.02 shall be limited to a maximum amount of \$10,000.00 in aggregate plus amounts Hydro receives from third parties or subcontractors attributable to such claims.

8.03 Except to the extent excused by Force Majeure, the occurrence of one or more of the following events will constitute a default by either Party under this Agreement (a "Default"):

- (a) the Party 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 10 days after the receipt of notice that such amount is due and owing;
- (b) the Party is in default or in breach of any term, condition or obligation under this Agreement, other than those described in Article 8.03(a), and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by the defaulting Party of notice thereof, unless the cure reasonably requires a longer period of time and the defaulting Party is diligently pursuing the cure, and it is cured within such longer period of time as is agreed between the Parties;
- (c) any representation or warranty made by the Party in this Agreement is false or misleading in any material respect;
- (d) the Party 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 the Party.

8.04 Hydro may recover all losses suffered by it that result from a Nalcor 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 Hydro, to recover any amounts owed to it by Nalcor under this Agreement.

8.05 Nalcor may recover all losses suffered by it that result from a Hydro 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 Nalcor to recover any amounts owed to it by Hydro under this Agreement. Notwithstanding the foregoing, with the exception of Default occurring as a result of gross negligence, willful misconduct or fraud by or on behalf of Hydro, Nalcor's right to recover losses suffered by it that result from a Hydro Default shall be limited to

a maximum amount of \$10,000.00 in aggregate plus amounts Hydro receives from third parties or subcontractors attributable to such losses.

- 8.06 Notwithstanding any other provision of this Agreement, in no event will a Party be liable to another Party for a decline in market capitalization, 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 Services, in favour of a third party, will be deemed to be direct, actual damages, as between the Parties. For the purposes of this Article 8.06, lost revenues or profits will be considered to be consequential, incidental or indirect damages.
- 8.07 Should either or both Parties hereto by reason of Force Majeure be prevented or delayed in the performance of any of its or their respective obligations under this Agreement, such Party or Parties shall not thereby incur any liability to the other, but shall nonetheless perform such obligation as soon as possible and to as full an extent as possible. Any Party claiming the occurrence of a Force Majeure event shall: (i) provide prompt oral notice followed by written notice within two (2) days after knowledge of such Force Majeure event to the other Party giving, to the extent reasonably possible, a detailed written explanation of the event and an estimate of its expected duration and probable effect on the performance of that Party's obligations under this Agreement, and (ii) use commercially reasonable efforts to remove the condition that prevents its proper and diligent performance of its obligations under this Agreement. Notwithstanding anything else in this Agreement, in the event that Hydro is unable to perform the Services or any part thereof as a result of strike, lockout or labour dispute, and Hydro fails to promptly arrange for performance of the Services by other means, Nalcor shall be entitled to perform the Services using its own forces, or by way of agreement with another contractor for the duration of the strike, lockout or labour dispute, or the duration of the term of the agreement reasonably entered into with another contractor. In the event that Nalcor exercises its discretion to take over performance of the Services in accordance with this Article 8.07, Hydro shall not be liable to Nalcor for any losses suffered by it as a result of performance of the Services by Nalcor or any contractor not engaged by Hydro, provided that the strike, lockout or labour dispute in question is determined to be an event of Force Majeure.

ARTICLE 9
RESPONSIBILITY

- 9.01 Hydro accepts no responsibility for the design and specifications of the generation facilities owned by MFC or the Transmission Facilities or for their suitability for the use to which they are applied and Hydro makes no warranties with respect thereto, unless such generation facilities or the Transmission Facilities are owned by Hydro.

- 9.02 Hydro may submit to Nalcor, for Nalcor's approval, suggestions for changes to the design or specifications of the generation facilities owned by MFC or the Transmission Facilities not owned by Hydro, but Hydro shall assume no responsibility for any changes approved by Nalcor.

ARTICLE 10
ENTIRE AGREEMENT & MODIFICATION OF AGREEMENT

- 10.01 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement.
- 10.02 Any amendment of this Agreement, or extension in accordance with Article 3.02, shall be binding upon the Parties hereto or either of them only if such amendment or extension is in writing and is duly executed by its authorized officers.

ARTICLE 11
SUCCESSORS AND ASSIGNS

- 11.01 This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and assigns.
- 11.02 Hydro agrees that Nalcor shall be permitted to assign its right, title and interest under this Agreement to the Partnership by providing written notice to Hydro.

ARTICLE 12
APPLICABLE LAW AND FORUM

- 12.01 This Agreement shall be governed by and interpreted in accordance with the laws of NL, and every action or other proceeding arising hereunder shall be determined exclusively by a court of competent jurisdiction in the said Province, subject to the right of appeal to the Supreme Court of Canada where such appeal lies.

ARTICLE 13
ADDRESS FOR SERVICE

- 13.01 Subject to Articles 13.02 and 13.03, any notice, request or other instrument which is required or permitted to be given, made or served under this Agreement by either of the Parties hereto shall be given, made or served in writing and shall be deemed to be properly given, made or served if personally delivered, or sent by facsimile transmission, or sent by electronic mail, or mailed by prepaid registered post, addressed, if service is to be made

(a) on Nalcor, to

VP General Counsel and Corporate Secretary
Nalcor Energy
Hydro Place
P.O. Box 12800
St. John's, Newfoundland and Labrador
Canada A1B 0C9
FAX: (709) 737-1782
Email: NalcorGeneralCounsel@nalcorenergy.com

With a copy to Nalcor's Designate

or

(b) on Hydro, to

VP General Counsel and Corporate Secretary
Newfoundland and Labrador Hydro
Hydro Place
P.O. Box 12400
St. John's, Newfoundland and Labrador
Canada A1B 4K7
FAX: (709) 737-1782
E-MAIL: GYoung@nlh.nl.ca

With a copy to Hydro's Designate.

- 13.02 Any notice, request or other instrument given, made or served as provided in Article 13.01, except electronic mail, shall be deemed to have been received by the Party hereto to which it is addressed, on the third business day after the date of sending and in the event of electronic mail, upon return confirmation of the actual intended recipient.
- 13.03 Either of the Parties hereto may change the address to which a notice, request or other instrument may be sent to it by giving to the other Party to this Agreement notice of such change, and thereafter, every notice, request or other instrument shall be delivered or mailed in the manner prescribed in Article 13.01 to such Party at the new address.

ARTICLE 14
DISPUTE RESOLUTION

- 14.01 Any dispute between the Parties as to the interpretation, application or administration of this Agreement or any failure to agree where agreement between the Parties is called for shall be settled in accordance with the provisions of this Article 14.
- 14.02 The claimant shall give written notice of a dispute to the other Party no later than 30 days after the event giving rise to the dispute occurs, setting forth the particulars of the dispute, the probable extent and value of the occurrence giving rise to the dispute and the relevant provisions of this Agreement. The other Party will reply to such Notice no later than 14 days after receipt or deemed receipt thereof, setting out in such reply its position, the grounds for such position and the relevant provisions of this Agreement.
- 14.03 No act by either Party will be construed as a renunciation or waiver of any of its rights or recourse in relation to the dispute, provided such Party has given the notice required pursuant to Article 14.02.
- 14.04 If the dispute cannot be settled by negotiation between the Parties, then each Party is entitled to exercise all rights and seek all remedies otherwise available to it at Law or in equity in connection with the dispute.
- 14.05 Notwithstanding any disagreement or dispute relating directly or indirectly to the performance of the Services, there shall be no interruption of performance of the Services by Hydro during the continuance of such disagreement or dispute unless specifically so ordered by Nalcor in writing.

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

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

James McNamee

Michael Ludwig

NALCOR ENERGY

By John MacIsaac
EVP, Power Supply

And Peter A. Hickman

Peter A. Hickman
VP General Counsel
NEWFOUNDLAND AND LABRADOR
HYDRO

[Signature]
President

James P. Y.
Corporate Secretary General Counsel

THIS AGREEMENT made at St. John's in the Province of Newfoundland and Labrador dated as of the 6 day of March, 2018.

BETWEEN: **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: **CHURCHILL FALLS (LABRADOR) CORPORATION LIMITED**, a company organized under the laws of Canada, and having its head office in the City of St. John's in the Province of Newfoundland and Labrador (hereinafter called "CFLCo") of the Second Part.

WHEREAS:

1. Labrador Transmission Corporation ("LTC") is the owner of the Transmission Facilities (as defined herein).
2. Nalcor entered into a Master Services Agreement with Labrador Transmission Corporation dated March 6, 2018 (the "LTA MSA"), pursuant to which Nalcor agreed to, amongst other things, provide operation and maintenance services for the Transmission Facilities.
3. At the request of Nalcor, and subject to the terms and conditions herein, CFLCo has agreed to provide certain operation and maintenance services for the Transmission Facilities which Nalcor is required to provide under the LTA MSA.

NOW THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and agreements hereinafter contained, the Parties agree as follows:

**ARTICLE 1
INTERPRETATION**

- 1.01 In this Agreement, wherever they occur and unless the context otherwise requires,
- (a) "Agreement" means this agreement, including all Schedules, as may be modified, amended, supplemented or restated by written agreement between the Parties.
 - (b) "Annual Minimum" shall have the meaning set out in Article 6.05(c).
 - (c) "CFLCo" means Churchill Falls (Labrador) Corporation Limited.
 - (d) "CFLCo Group" shall have the meaning set out in Article 8.01.

- (e) **"CFLCo Full Labour Costs"** means the full cost to CFLCo for employee labour, which cost includes the following:
- (i) The base wage paid to a CFLCo employee for actual hours or part thereof worked, including the base wage for both regular and overtime hours, as applicable.
 - (ii) The cost of employee benefits, including, but not limited to, fringe benefits, employee insurance and workers compensation insurance associated with actual regular hours or part thereof worked.
 - (iii) The cost of CFLCo's site services associated with actual regular hours or part thereof worked.

For greater certainty, CFLCo Full Labour Costs shall not include any profit element. CFLCo Full Labour Costs may be subject to an annual adjustment.

- (f) **"CFLCo Warehouse Costs"** means the costs associated with operating CFLCo's warehouse, billed based upon a percentage charge for items that flow through CFLCo's inventory system, which percentage charge shall not include any profit element. For greater certainty, CFLCo Warehouse Costs may be subject to an annual adjustment.
- (g) **"Churchill Falls Switchyard"** means the existing switchyard at the CFLCo generating facility and the extension made to it owned by CFLCo, situated at Churchill Falls, Labrador, in the Province of Newfoundland and Labrador.
- (h) **"Churchill Falls Terminal Station #2"** means the 735 kV to 315 kV step-down substation owned by LTC situated at Churchill Falls, Labrador, in the Province of Newfoundland and Labrador.
- (i) **"Default"** shall have the meaning set out in Article 8.03.
- (j) **"Designate"** shall have the meaning set out in Article 4.04.
- (k) **"Effective Date"** shall be the date set forth at the commencement of this Agreement.
- (l) **"FTEs"** shall have the meaning set out in Article 6.05(a).
- (m) **"Force Majeure"** means an event, condition or circumstance 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 hereunder, including, without limitation, acts of public enemies, war, invasion, insurrection, riot, civil disturbance, strike, lockout, labour dispute, earthquake, serious epidemic, flood or fire.

- (n) **“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. 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.
- (o) **“Insolvency Event”** means, in relation to any Party, the occurrence of one or more of the following:
- (i) An order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party.
 - (ii) 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 any action or consents to any action against it under any bankruptcy or insolvency law or any other similar law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), 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.
 - (iii) 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 under the any bankruptcy or insolvency law or any other similar law.

- (iv) Such Party has ceased paying its current obligations in the ordinary course of business as they generally become due.
- (p) “LTC” means Labrador Transmission Corporation.
- (q) “LTA MSA” means the Master Services Agreement between Nalcor and LTC dated _____, 2018, as may be amended from time to time [NTD: insert date of LTA MSA].
- (r) “Muskrat Falls Terminal Station #2” means the 315 kV substation owned by LTC situated on the south side of the Churchill River at Muskrat Falls, Labrador, in the Province of Newfoundland and Labrador.
- (s) “NLH” means Newfoundland and Labrador Hydro Corporation.
- (t) “NLSO” means NLH acting in its capacity as the Newfoundland and Labrador Systems Operator, being the systems operations department of NLH responsible for the safe and reliable operation of the Newfoundland and Labrador transmission system, or a functionally separate division of NLH performing this function, or any successor as applicable.
- (u) “Nalcor” means Nalcor Energy.
- (v) “Nalcor Group” shall have the meaning set out in Article 8.02.
- (w) “Parties” means the parties to this Agreement, and “Party” means one of them, as determined by context.
- (x) “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.
- (y) “Services” means the operation and maintenance services to be provided by CFLCo for Nalcor, as more particularly described in Article 2.01.
- (z) “Supporting Material” shall have the meaning set out in Article 6.03.
- (aa) “Term” shall have the meaning set out in Article 3.01.
- (bb) “Trans Labrador Fibre” means the fibre optic communications line and all related facilities owned by LTC and located between the Town of Labrador City, the Town of Churchill Falls, and the Town of Happy Valley-Goose Bay, all in Labrador, in the Province of Newfoundland and Labrador, including, but not limited to:

- (i) All fibre optic cable, pole attachment hardware, splice hardware, and related infrastructure.
 - (ii) All electronic assets, including, but not limited to, common photonic layer equipment, wave division multiplexing equipment, transponders, multiplexers and all related equipment required for the transmission and receiving of telecommunications signals.
 - (iii) All optical equipment located in the terminal stations associated with the fibre optic communications line.
- (cc) **“Transmission Facilities”** means the following:
- (i) All facilities within Churchill Falls Terminal Station #2.
 - (ii) Two (2) 735 kV transmission lines referred to as B4 and B5 between the Churchill Falls Switchyard and Churchill Falls Terminal Station #2 owned by LTC, in Labrador, in the Province of Newfoundland and Labrador.
 - (iii) Two (2) 315 kV transmission lines referred to as L3101 and L3102 between Churchill Falls Terminal Station #2 and Muskrat Falls Terminal Station #2 owned by LTC, in Labrador, in the Province of Newfoundland and Labrador. For greater certainty, any facilities located within Muskrat Falls Terminal Station #2 shall not be included within this Article 1.01(cc)(iii).
 - (iv) The Trans Labrador Fibre, and all related facilities used in conjunction with the Trans Labrador Fibre, including, but not limited to, those related facilities located in the Churchill Falls Switchyard.
- 1.02 In this Agreement all references to dollar amounts and all references to any other money amounts are, unless specifically otherwise provided, expressed in terms of coin or currency of Canada which at the time of payment or determination shall be legal tender herein for the payment of public and private debts.
- 1.03 Words in this Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.
- 1.04 Where a word is defined anywhere in this Agreement, other parts of speech and tenses of the same word have corresponding meanings.

- 1.05 Wherever in this Agreement a number of days is prescribed for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last. Whenever this Agreement requires any notice to be given or a request to be made on a Saturday, Sunday or holiday recognized by either of the Parties in running their business, such notice or request may be given or made on the first business day occurring thereafter, and whenever in this Agreement the time within which any right will lapse or expire shall terminate on a Saturday, Sunday or holiday recognized by either of the Parties in running their business, such time will continue to run until the next succeeding business day.
- 1.06 The headings of all the articles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.07 Any reference in this Agreement to an Article, a Clause, a subclause or a paragraph shall, unless the context otherwise specifically requires, be taken as a reference to an article, a clause, a subclause or a paragraph of this Agreement.
- 1.08 This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument.
- 1.09 The Parties agree that Nalcor is entering into this Agreement as principal, and not as an agent for any other Person.

ARTICLE 2
OBJECTS

- 2.01 CFLCo shall perform the following operation and maintenance services in relation to the Transmission Facilities:
- (a) any supervision of the Transmission Facilities including, but not limited to, the gathering of metering data and the keeping of logs, to the extent that such supervision is not the responsibility of the NLSO;
 - (b) operation of the Transmission Facilities in accordance with the operating procedures developed by Nalcor, LTC or the NLSO, provided such operating procedures have been provided to CFLCo;
 - (c) where no procedures have been developed by Nalcor, LTC or the NLSO, development of operating procedures satisfactory to Nalcor, and operation of the Transmission Facilities in accordance with those procedures;

- (d) routine inspection of the Transmission Facilities carried out in such a manner and with such frequency as shall be satisfactory to Nalcor;
- (e) routine maintenance and repairs in accordance with Nalcor's approved annual maintenance plan, which may be amended from time to time;
- (f) if necessary, the purchase and warehousing of spare parts and tools reasonably required for the purposes of such maintenance, provided however that such purchase of spare parts and tools shall be carried out in accordance with all other provisions of this Agreement;
- (g) all such additional maintenance services approved by Nalcor, including, but not limited to, replacement and repair of the Transmission Facilities or any part thereof, as is reasonably necessary to keep the Transmission Facilities in good working order and condition;
- (h) any additional services relating to the Transmission Facilities requested by Nalcor in writing;

(collectively, the "Services").

ARTICLE 3
TERM

- 3.01 The Term of this Agreement shall commence on the Effective Date and terminate on the earlier of: (i) termination of the LTA MSA; (ii) written agreement of the Parties to terminate; or (iii) termination in accordance with Article 3.03 ("Term").
- 3.02 The Term may be extended by mutual agreement of the Parties hereto, in accordance with the requirements of Article 10.02.
- 3.03 Either Party may terminate this Agreement at any time during the Term or any extension thereof by providing one (1) year's prior written notice to the other Party of its intention to terminate.
- 3.04 Nalcor shall provide CFLCo immediate written notice of any agreement to terminate the LTA MSA, or other purported termination of the LTA MSA by either Nalcor or LTC.

ARTICLE 4
PERFORMANCE

- 4.01 CFLCo shall perform the Services in accordance with Good Utility Practice and the terms and conditions of this Agreement.
- 4.02 Nalcor shall provide to CFLCo in a timely manner all documentation within its care and control which is necessary for CFLCo to perform the Services, including, but not limited to, operating procedures developed by Nalcor, LTC or the NLSO, Nalcor's approved annual maintenance plan, and any other instructions.
- 4.03 Nalcor represents and warrants to CFLCo that, pursuant to the provisions of the LTA MSA, it is authorized to operate and perform maintenance on the Transmission Facilities, and that it is authorized to subcontract the Services to CFLCo.
- 4.04 The Parties to this Agreement hereby agree that, pursuant to this Article 4, and to Article 5, within thirty days after the execution and delivery of this Agreement, each Party will designate a person (hereinafter called the "Designate") who shall, together with the person so designated by the other Party, jointly prepare a work scope prescribing details of the Services to be furnished by CFLCo pursuant to this Agreement, and the said Designates may jointly modify the work scope from time to time as necessary.

ARTICLE 5
LIASON

- 5.01 Each Party's Designate shall act on its behalf in the administration of this Agreement and shall have authority to act for and make decisions on behalf of the designating Party both with respect to foreseeable situations and emergencies that may arise from time to time.
- 5.02 Either of the Parties may cancel the appointment and designation of any person made pursuant to Article 4.04 and substitute another Designate by notice to the other Party.

ARTICLE 6
CONSIDERATION

- 6.01 The consideration to be paid by Nalcor to CFLCo for the Services shall be the following:
 - (a) In the case of labour, CFLCo's Full Labour Costs.
 - (b) In the case of equipment, the cost of material and supplies used directly in performing the Services, calculated on the basis of full recovery of costs incurred by CFLCo. For greater certainty, costs payable under this Article 6.01(b) shall include CFLCo's Warehouse Costs, but shall not include any profit element whatsoever.
- 6.02 CFLCo shall submit monthly invoices, in a form acceptable to Nalcor, for expenditures chargeable to Nalcor and associated with the performances of the Services in the preceding

month. Invoices shall be detailed in accordance with Nalcor's code of accounts as established from time to time or other details as reasonably requested by Nalcor.

- 6.03 Invoices shall be accompanied by all relevant supporting documentation as Nalcor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced, along with a summary sheet cross referenced to all supporting documentation ("**Supporting Material**"). Nalcor shall not be responsible or liable for any claim arising from delays in payment due to CFLCo not providing complete Supporting Material, satisfactory to Nalcor.
- 6.04 All accounts received by Nalcor from CFLCo shall be paid in full within thirty days after the date on which such account was rendered, unless Nalcor disputes any item invoiced in accordance with this Article 6.04. In the event of dispute:
- (a) Nalcor shall notify CFLCo of any item disputed and shall specify the reason for such dispute.
 - (b) Payment of the disputed item shall be withheld until settlement of the dispute and payment shall be made on the undisputed portion of the invoice.
 - (c) CFLCo shall continue to fulfill its obligation to proceed with all due diligence to provide the Services, notwithstanding the dispute.
 - (d) Once the disputed amounts are resolved, Nalcor shall pay any amount determined to be owing to CFLCo in accordance with this Article 6.
- 6.05 With respect to labour, the Parties agree to the following:
- (a) In order to reliably fulfill its obligations under this Agreement, CFLCo shall hire four (4) additional full time equivalents, including one (1) electrician, one (1) protection and control technologist, one (1) communications technologist, and one (1) line worker (the "FTEs").
 - (b) Subject to Article 6.07, and CFLCo's obligation to perform the Services in accordance with Good Utility Practice, performance of the Services may be completed by the FTEs or any other CFLCo employees.
 - (c) Notwithstanding anything else contained in this Article 6, Nalcor shall pay an annual minimum amount equal to CFLCo's Full Labour Costs, excluding overtime, for each of the FTEs based on each of the FTEs working two thousand eighty (2080) regular hours (i.e. non-overtime hours) per year (the "**Annual Minimum**").

- 6.06 The Parties agree that the number and classification of FTEs shall be subject to adjustment from time to time by agreement between the Parties in writing. Where either Party wishes to adjust the number or classification of FTEs, it shall notify the other Party in writing of its position with respect to such adjustment. Where an agreement cannot be reached with respect to an adjustment to the number of FTEs, the Parties agree that any dispute shall be resolved in accordance with the dispute resolution provisions of Article 14.
- 6.07 The Parties further agree that CFLCo shall act reasonably to limit overtime hours worked by its employees in the performance of the Services.
- 6.08 Each Party shall keep and maintain complete and accurate records required by either of them for the purpose of proper administration of this Agreement. Each Party shall provide or cause to be provided to the other Party 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 by the other Party for purposes of verifying amounts invoiced pursuant to this Article 6, or other purposes related to the proper administration of this Agreement. For greater certainty, to the extent that records or data are kept and maintained by LTC, and Nalcor has access to such records pursuant to the provisions of the LTA MSA, Nalcor shall provide CFLCo access to such records or data for purposes related to the proper administration of this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records or data provided that those employees are, or the auditor is, bound by any confidentiality requirements. Each Party will 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.

ARTICLE 7
PARTS AND TOOLS AND ACCESS TO TRANSMISSION FACILITIES

- 7.01 In order to enable CFLCo to perform the Services with promptness and efficiency, Nalcor shall provide such spare parts and specialized tools as are reasonably required, as determined by Nalcor, and requested by CFLCo, and CFLCo shall store such spare parts and specialized tools in a location acceptable to Nalcor.
- 7.02 CFLCo shall be entitled at all times to use spare parts and specialized tools purchased pursuant to Article 7.01 in the course of performing the Services.
- 7.03 CFLCo shall give notice in writing to Nalcor each time it considers that the stock of spare parts and specialized tools needs to be replenished.
- 7.04 Where practical, before purchasing tools, spare parts or materials, CFLCo shall use, for the purposes of the Services, all of the usable tools, spare parts and materials heretofore or hereafter provided to it by Nalcor for such purposes.

- 7.05 Notwithstanding Articles 7.01 through 7.04, Nalcor shall provide CFLCo an annual budget in relation to the performance of the Services, which annual budget shall identify an approved expenditure for tools, spare parts and materials required to perform the Services, and CFLCo shall be permitted to order and obtain such tools, spare parts and materials which may be reasonably necessary to perform the Services, provided however that the cost of such tools, spare parts and materials do not exceed the approved expenditures outlined in the annual budget provided by Nalcor. CFLCo shall notify Nalcor as soon as reasonably practical in the event that expenditures are likely to exceed those which are approved in the annual budget, and the Parties shall agree in writing regarding the process for purchasing further tools, spare parts and materials required to perform the Services.
- 7.06 To the extent that time reasonably permits, CFLCo will inform Nalcor of all purchases of tools, spare parts and materials which it proposes to make pursuant to Article 7.05. In the event of loss of or damage to major individual components of the Transmission Facilities, CFLCo shall inform Nalcor of the same, and Nalcor shall decide, in its sole discretion, whether such component should be repaired or replaced.
- 7.07 Upon the termination of this Agreement, CFLCo shall return to Nalcor all tools, spare parts, equipment and materials furnished to it by Nalcor or otherwise obtained by CFLCo pursuant to this Agreement for purposes of performing the Services.

ARTICLE 8
INDEMNIFICATION AND LIMITATION OF DAMAGES

- 8.01 Nalcor shall indemnify, defend, reimburse, release and save harmless CFLCo and its directors, officers, employees, agents and the successors and permitted assigns of each of them, (collectively, the "CFLCo Group") from and against, and as a separate and independent covenant agrees to be liable for, all claims that may be brought against any member of the CFLCo Group by or in favour of a third party to the proportionate extent that the claim is based upon, in connection with, relating to or arising out of:
- (a) any inaccuracy or breach of any representation or warranty made by Nalcor in this Agreement or any other document or instrument delivered by Nalcor pursuant to this Agreement, in any material respect;
 - (b) any breach or failure by Nalcor to perform or comply with any agreement, covenant or obligation of Nalcor in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
 - (c) any negligence, gross negligence, wilful misconduct or fraud by or on behalf of Nalcor, occurring in connection with, incidental to or resulting from Nalcor's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.

8.02 CFLCo shall indemnify, defend, reimburse, release and save harmless Nalcor and its directors, officers, employees, agents and the successors and permitted assigns of each of them, (collectively, the "Nalcor Group") from and against, and as a separate and independent covenant agrees to be liable for, all claims that may be brought against any member of the Nalcor Group by or in favour of a third party to the proportionate extent that the claim is based upon, in connection with, relating to or arising out of:

- (a) any inaccuracy or breach of any representation or warranty made by CFLCo in this Agreement or any other document or instrument delivered by CFLCo pursuant to this Agreement, in any material respect;
- (b) any breach or failure by CFLCo to perform or comply with any agreement, covenant or obligation of CFLCo in this Agreement or any other document or instrument delivered pursuant to this Agreement; or
- (c) any negligence, gross negligence, wilful misconduct or fraud by or on behalf of CFLCo occurring in connection with, incidental to or resulting from CFLCo's obligations under this Agreement or any other document or instrument delivered pursuant to this Agreement.

Notwithstanding the foregoing, with the exception of instances of gross negligence, willful misconduct or fraud by or on behalf of CFLCo, CFLCo's duty to indemnify, defend, reimburse, release and save harmless under this Article 8.02 shall be limited to a maximum amount of \$10,000.00 in aggregate plus amounts CFLCo receives from third parties or subcontractors attributable to such claims.

8.03 Except to the extent excused by Force Majeure, the occurrence of one or more of the following events will constitute a default by either Party under this Agreement (a "Default"):

- (a) the Party 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 10 days after the receipt of notice that such amount is due and owing;
- (b) the Party is in default or in breach of any term, condition or obligation under this Agreement, other than those described in Article 8.03(a), and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by the defaulting Party of notice thereof, unless the cure reasonably requires a longer period of time and the defaulting Party is diligently pursuing the cure, and it is cured within such longer period of time as is agreed between the Parties;
- (c) any representation or warranty made by the Party in this Agreement is false or misleading in any material respect;
- (d) the Party 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 the Party.
- 8.04 CFLCo may recover all losses suffered by it that result from a Nalcor 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 CFLCo, to recover any amounts owed to it by Nalcor under this Agreement.
- 8.05 Nalcor may recover all losses suffered by it that result from a CFLCo 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 Nalcor to recover any amounts owed to it by CFLCo under this Agreement. Notwithstanding the foregoing, with the exception of Default occurring as a result of gross negligence, willful misconduct or fraud by or on behalf of CFLCo, Nalcor's right to recover losses suffered by it that result from a CFLCo Default shall be limited to a maximum amount of \$10,000.00 in aggregate plus amounts CFLCo receives from third parties or subcontractors attributable to such losses.
- 8.06 Notwithstanding any other provision of this Agreement, in no event will a Party be liable to another Party for a decline in market capitalization, 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 Services, in favour of a third party, will be deemed to be direct, actual damages, as between the Parties, for the purposes of this Article 8.06, lost revenues or profits will be considered to be consequential, incidental or indirect damages.
- 8.07 Should either or both Parties hereto by reason of Force Majeure be prevented or delayed in the performance of any of its or their respective obligations under this Agreement, such Party or Parties shall not thereby incur any liability to the other, but shall nonetheless perform such obligation as soon as possible and to as full an extent as possible. Any Party claiming the occurrence of a Force Majeure event shall: (i) provide prompt oral notice followed by written notice within two (2) days after knowledge of such Force Majeure event to the other Party giving, to the extent reasonably possible, a detailed written explanation of the event and an estimate of its expected duration and probable effect on the performance of that Party's obligations under this Agreement, and (ii) use commercially reasonable efforts to remove the condition that prevents its proper and diligent performance of its obligations under this Agreement. Notwithstanding anything else in this Agreement, in the event that CFLCo is unable to perform the Services or any part thereof as a result of strike, lockout or labour dispute, and CFLCo fails to promptly arrange for performance of the Services by other means, Nalcor shall be entitled to perform the Services using its own forces, or by way of agreement with another contractor for the duration of the strike, lockout or labour dispute, or the duration of the term of the agreement reasonably entered into with another contractor. In the event that Nalcor exercises its discretion to take over performance of the Services in accordance with this Article

8.07, CFLCo shall not be liable to Nalcor for any losses suffered by it as a result of performance of the Services by Nalcor or any contractor not engaged by CFLCo, provided that the strike, lockout or labour dispute in question is determined to be an event of Force Majeure.

ARTICLE 9
RESPONSIBILITY

- 9.01 CFLCo accepts no responsibility for the design and specifications of the Transmission Facilities or for their suitability for the use to which they are applied and CFLCo makes no warranties with respect thereto.
- 9.02 CFLCo may submit to Nalcor, for Nalcor's approval, suggestions for changes to the design or specifications of the Transmission Facilities but CFLCo shall assume no responsibility for any changes approved by Nalcor.

ARTICLE 10
ENTIRE AGREEMENT & MODIFICATION OF AGREEMENT

- 10.01 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement.
- 10.02 Any amendment of this Agreement, or extension in accordance with Article 3.02, shall be binding upon the Parties hereto or either of them only if such amendment or extension is in writing and is duly executed by its authorized officers.

ARTICLE 11
SUCCESSORS AND ASSIGNS

- 11.01 This Agreement shall be binding upon and enure to the benefit of the Parties hereto and their respective successors and assigns.
- 11.02 CFLCo agrees that Nalcor shall be permitted to assign its right, title and interest under this Agreement to LTC by providing written notice to CFLCo.

ARTICLE 12
APPLICABLE LAW AND FORUM

- 12.01 This Agreement shall be governed by and interpreted in accordance with the laws of the Province of Newfoundland and Labrador, and every action or other proceeding arising hereunder shall be determined exclusively by a court of competent jurisdiction in the said Province, subject to the right of appeal to the Supreme Court of Canada where such appeal lies.

ARTICLE 13
ADDRESS FOR SERVICE

13.01 Subject to Articles 13.02 and 13.03, any notice, request or other instrument which is required or permitted to be given, made or served under this Agreement by either of the Parties hereto shall be given, made or served in writing and shall be deemed to be properly given, made or served if personally delivered, or sent by facsimile transmission, or sent by electronic mail, or mailed by prepaid registered post, addressed, if service is to be made

(a) on Nalcor, to

VP General Counsel and Corporate Secretary
Nalcor Energy
Hydro Place
P.O. Box 12800
St. John's, Newfoundland and Labrador
Canada A1B 0C9
FAX: (709) 737-1782
Email: NalcorGeneralCounsel@nalcorenergy.com

With a copy to Nalcor's Designate

or

(b) on CFLCo, to

VP General Counsel and Corporate Secretary
Churchill Falls (Labrador) Corporation Limited
Hydro Place
P.O. Box 12500
St. John's, Newfoundland and Labrador
Canada A1B 3T5
FAX: (709) 737-1782
E-MAIL: NalcorGeneralCounsel@nalcorenergy.com

With a copy to CFLCo's Designate.

13.02 Any notice, request or other instrument given, made or served as provided in Article 13.01, except electronic mail, shall be deemed to have been received by the Party hereto to which it is

addressed, on the third business day after the date of sending and in the event of electronic mail, upon return confirmation of the actual intended recipient.

- 13.03 Either of the Parties hereto may change the address to which a notice, request or other instrument may be sent to it by giving to the other Party to this Agreement notice of such change, and thereafter, every notice, request or other instrument shall be delivered or mailed in the manner prescribed in Article 13.01 to such Party at the new address.

ARTICLE 14
DISPUTE RESOLUTION

- 14.01 Any dispute between the Parties as to the interpretation, application or administration of this Agreement or any failure to agree where agreement between the Parties is called for shall be settled in accordance with the provisions of this Article 14.
- 14.02 The claimant shall give written notice of a dispute to the other Party no later than 30 days after the event giving rise to the dispute occurs, setting forth the particulars of the dispute, the probable extent and value of the occurrence giving rise to the dispute and the relevant provisions of this Agreement. The other Party will reply to such Notice no later than 14 days after receipt or deemed receipt thereof, setting out in such reply its position, the grounds for such position and the relevant provisions of this Agreement.
- 14.03 No act by either Party will be construed as a renunciation or waiver of any of its rights or recourse in relation to the dispute, provided such Party has given the notice required pursuant to Article 14.02.
- 14.04 If the dispute cannot be settled by negotiation between the Parties, then each Party is entitled to exercise all rights and seek all remedies otherwise available to it at Law or in equity in connection with the dispute.
- 14.05 Notwithstanding any disagreement or dispute relating directly or indirectly to the performance of the Services, there shall be no interruption of performance of the Services by CFLCo during the continuance of such disagreement or dispute unless specifically so ordered by Nalcor in writing.

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

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

Cathy O'Leary

Cathy O'Leary

NALCOR ENERGY

John McIsaac
EVP, Power Supply

Peter Lee
VP, General Counsel & Corporate Secretary

CHURCHILL FALLS (LABRADOR)
CORPORATION LIMITED

Walter Parsons
VP Transmission & Town Services

James McManis
VP Finance, Power Supply

Intercompany Transactions Costing Guidelines

July 2017



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Exhibit 5: Intercompany Transactions Costing Guidelines

1 **1.0 Purpose**

2 This document is intended to outline the guidelines for charging costs across the lines of
 3 business within Nalcor Energy (Nalcor or the Company).

4
 5 **2.0 Introduction**

6 Nalcor is a Crown corporation that was established in 2007 as part of one of the key initiatives
 7 of Newfoundland and Labrador’s Energy Plan. The Company, which is wholly owned by the
 8 Government of Newfoundland and Labrador, was established to take a lead role in the
 9 development of the province’s energy resources. The Nalcor legal entity structure is outlined in
 10 Figure 1.

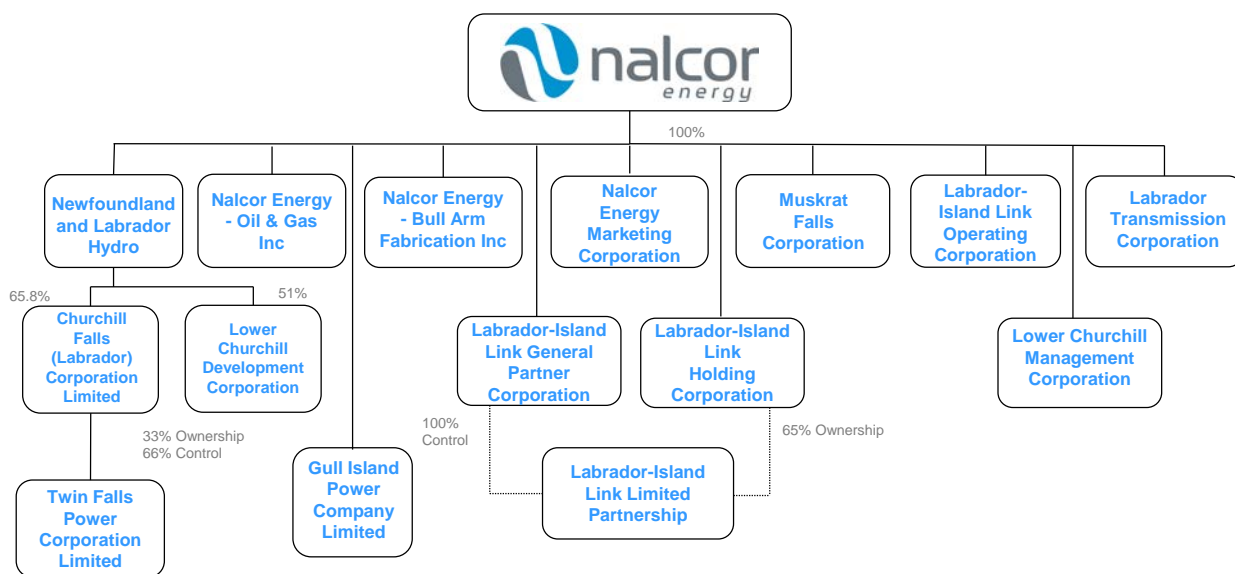


Figure 1 – Nalcor Energy Legal Entity Structure

11 Nalcor’s business includes the development, generation, transmission and distribution of
 12 electricity; the exploration, development, production and sale of oil and gas; industrial
 13 fabrication and energy marketing. These intercompany transaction costing guidelines apply to
 14 both intra-company and intercompany transactions.

Exhibit 5: Intercompany Transactions Costing Guidelines

1 The guidelines are based on the principle of cost based recovery. There is no profit component
2 and employees track time worked for other lines of business using a weekly time sheet. This
3 results in a labour recharge which is also used in the calculation of net full time equivalents
4 (FTEs). Costs associated with the operations of certain departments that provide common
5 services available to all lines of business are allocated through an Administration Fee as
6 outlined in this document. Common service business units are based in both Nalcor and Hydro.

7

8 **3.0 Costing Methods**

9 The costing framework used includes three primary means of charging costs among lines of
10 business at Nalcor.

11 Type 1 - Common Service Costs (via Administration Fee);

12 Type 2 - Costs related to the provision of Corporate Services; and

13 Type 3 – Cost Recovery business units.

14

15 **3.1 Type 1 – Common Service Costs**

16 Certain functions provide common services to various lines of business. Costs are recovered
17 through an Administration fee as described below. FTEs in common service business units are
18 counted in the entity in which they are based, however their costs are allocated through an
19 Administration Fee.

Exhibit 5: Intercompany Transactions Costing Guidelines

Table 1 – Common Services

Common Service Departments	Allocation Basis	Entity
Human Resources	FTE	Nalcor
Safety and Health	FTE	Nalcor
Environment	FTE	Nalcor
Information Systems (IS)	Average Users ¹	Nalcor
Hydro Place office space and related costs	Square footage	Hydro
Telephone and Local Area Network (LAN) costs	Users	Hydro

1 **3.1.1 Human Resources**

2 Human Resources provides service to all lines of business in the areas of:

- 3 • Payroll;
- 4 • Human Resources Systems;
- 5 • Pension administration;
- 6 • Employee recognition programs;
- 7 • Administration of the performance management system;
- 8 • Maintenance of the human resources database.

9

10 Operating costs incurred in providing Human Resources services in the common service
11 business unit are allocated to the lines of business on a FTE basis.

12

13 **3.1.2 Safety and Health**

14 The Safety and Health department provides Occupational Health services including coordinating
15 corporate efforts with regard to employee safety and wellness. Operating costs incurred in
16 providing safety and health services are allocated to the lines of business on a FTE basis.

¹ Average users is the average of the number of FTEs and contractors, Lotus Notes mail boxes, number of computers and JDE Users.

Exhibit 5: Intercompany Transactions Costing Guidelines

1 **3.1.3 Environmental Services**

2 The Environment department coordinates corporate efforts with regard to environmental
3 stewardship. Operating costs incurred in providing environmental oversight services are
4 allocated to the lines of business on a FTE basis.

5

6 **3.1.4 Information Systems**

7 Information Systems (IS) provides assistance and support in the areas of software applications,
8 planning and integration and business solutions. This department is also responsible for the
9 maintenance and administration of the company-wide computer infrastructure and provides
10 technical support. Operating costs incurred in providing IS services are allocated to the lines of
11 business on an average user basis. Depreciation expenses and a return on rate base at the
12 weighted average cost of capital (WACC) for costs capitalized such as servers and software are
13 allocated to each line of business on an average user basis. Costs that are incurred solely for a
14 particular line of business, rather than shared among the lines of business are charged to that
15 line of business and are excluded from the determination of shared costs.

16

17 **3.1.5 Office Space**

18 Each line of business occupying floor space at Hydro Place is charged a rental charge for floor
19 space. The square footage rental rate reflects the average annual capital and operating cost for
20 Hydro Place as determined by the following formula:

21

$$\frac{\text{Hydro Place operating costs} + \text{return on rate base} + \text{annual depreciation}}{\text{Hydro Place total square footage}}$$

24

25 **3.1.6 Telephone Infrastructure (PBX) Costs**

26 All lines of business are charged their share of Telephone Infrastructure (PBX) costs including
27 long distance charges. The Local Area Network (LAN) costs provided by Network Services are
28 divided by the total number of LAN ports to derive a cost per user. The telephone costs

Exhibit 5: Intercompany Transactions Costing Guidelines

1 provided by Network Services are divided by the number of telephone, fax, and modem lines to
2 derive a cost per telephone.

3

4 **3.2 Type 2 – Corporate Costs**

5 Certain departments provide corporate services (or shared services) to other lines of business
6 within Nalcor. These services include management, general accounting, treasury, purchasing,
7 legal, human resources, safety and health, engineering services and administration.
8 Transactions associated with these services are governed by these guidelines. Intercompany
9 transactions operate on the premise that all transactions are billed at cost. Corporate costs
10 incurred within various lines of business are charged to the appropriate line of business as
11 described below.

12

13 **3.2.1 Employee Labour Costs**

14 All employees of Nalcor are required to charge time by completing time sheets which allocate
15 labour to work orders based on activity. The guiding principle is that where an employee
16 spends time on specific tasks and work activities for another entity or line of business, time is to
17 be charged at cost. Cost, or the bill rate, is defined as labour costs, fringe benefits (including
18 time off) and other direct costs. See Schedule I for a detailed listing of the components of the
19 bill rate. The operating bill rates are reviewed annually and updated as required. Labour hours
20 that are recharged through this process are used in the calculation of net FTEs.

21

22 **3.2.2 Overtime**

23 Overtime will be charged as incurred in accordance with the overtime policy and no additional
24 mark-up or fixed charge is applied.

Exhibit 5: Intercompany Transactions Costing Guidelines

1 **3.2.3 Time Sheets**

2 All employees are required to complete weekly time sheets. All work hours must be coded to
3 work orders in order to adequately track hours to the appropriate business unit. Time is coded
4 in 30 minute increments.

5

6 **3.2.4 Corporate Services**

7 The functions and departments that may share services across entities include:

8 **a) Leadership Team²**

9 Executive management provides strategic oversight and general management.

10 **b) Legal**

11 General Counsel's responsibilities include the provision of legal and corporate secretary
12 services.

13 **c) Internal Audit**

14 The Internal Audit department provides auditing services as determined in an annual audit
15 plan as part of the annual update of the Five-Year Internal Audit Plan.

16 **d) Engineering Services**

17 This division provides services in all engineering disciplines and covers such items as:

- 18 a) Design, construction and project management;
19 b) Engineering studies, technical specifications and construction coordination;
20 c) Tender preparation and analysis including interaction with consultants; and
21 d) Review and resolution of maintenance problems.

22 **e) Environmental Services**

23 The Environmental Services department's activities include auditing for compliance with
24 government regulations and corporate policy, obtaining permits and approvals for proposed
25 programs and advising on environmental matters.

² Excludes Hydro as Hydro has a separate Leadership team that supports Hydro only.

Exhibit 5: Intercompany Transactions Costing Guidelines

1 **f) Financial Planning**

2 The Investment Evaluation department provides services to facilitate the production, review
3 and distribution of annual long-term financial plans. As well, they provide financial planning
4 and analyses for various activities and scenarios.

5 **h) Risk and Insurance**

6 The Risk and Insurance department provides services related to the placement, policy and
7 claims administration, risk control and risk financing of the corporate insurance program.

8 **i) Finance**

9 The Finance department provides accounting and treasury services.

10 **j) Supply Chain Management**

11 The Supply Chain Management department coordinates all efforts related to procurement
12 process activities including tendering, purchasing and contract administration.

13
14 **3.2.5 Fixed Charge**

15 In addition to labour costs, a fixed rate will be applied to each hour of regular labour charged to
16 lines of business. The fixed charge accounts for the additional cost, beyond basic salary and
17 benefit costs, of having an employee available to provide service. The fixed charge recovers
18 costs originally charged in the Administration Fee as well as other employee related costs,
19 including:

- 20 • Telephone and fax;
- 21 • Books and subscriptions;
- 22 • Membership fees and dues;
- 23 • Conferences;
- 24 • Training; and
- 25 • Employee expenses (e.g. overtime meal allowance).

26
27 While most employees who provide intercompany services are located in Hydro Place, this rate
28 will also be used as a proxy for employees working from other locations.

Exhibit 5: Intercompany Transactions Costing Guidelines

1 The fixed charge rate is reviewed annually and updated accordingly.

2

3 **3.2.6 Materials Costs**

4 Materials issued from inventory will be charged at cost to the applicable line of business.

5

6 **3.2.7 Vehicle and Other Equipment Costs**

7 Vehicles utilized across lines of business will be charged a rental rate which is based upon the

8 type of vehicle utilized. The rental charge is calculated by multiplying the usage time by the

9 daily or hourly rental rate for the applicable vehicle. The rental rates are updated annually.

10

11 **3.2.8 Computers**

12 Computer purchases are charged directly to the applicable line of business.

13

14 **3.3 Type 3 – Cost Recovery Business Units**

15 Certain functions incur costs on a cost recovery basis. In these cases, all costs associated with

16 the activity are charged in accordance with the applicable cost recovery arrangements.

17

18 **4.0 Billing and Collection**

19 Invoices for the recovery of intercompany transactions are to be issued on a monthly basis.

20 Billings to and from related entities shall be undertaken within 30 days of the end of the month

21 in which the service, resource or asset is provided. Receivables between related companies are

22 paid upon invoice receipt from a related entity. If the invoice is not paid in full within 30 days

23 from the date of invoice, Finance will calculate an intercompany interest charge. The amount of

24 the charge will be such that there is no net financing impact on the Company to which the

25 balance is owed. Finance charges are calculated by applying a rate to the intercompany

26 balance(s) that is equal to the cost of short-term financing for the Company to which the

27 balance is owed. If the Company to which the balance is owed is Hydro, then the rate applied to

28 such balances is the last approved WACC, which is currently 6.61% (2013 Amended GRA).

Exhibit 5 - Schedule I
Operating Bill Rate Components

Operating Bill Rate Components

Components of the operating bill rate are as follows:

- Salary Cost Components:
 - Salaries & Temporary Salaries including the payroll code for Easeback/Return to Work
 - Other Salary Costs - Retroactive Pay

- Mark Up Components:
 - Fringe Benefit Costs
 - Canada Pension Plan
 - Employment Insurance
 - Public Service Pension Plan
 - Group Money Purchase Plan
 - Prior Service Matched PSPP
 - Workplace Health Safety and Compensation Premiums
 - Insurances:
 - Life Insurances
 - A D&D Insurance
 - Medical Insurance
 - Dental Insurance
 - Company Costs:
 - Employee Future Benefits expense
 - Payroll Taxes
 - Other Salary Costs - Bonus, Performance Contracts & Signing Bonus
 - Leave:
 - All paid leave types.