

**NEWFOUNDLAND AND LABRADOR HYDRO**  
**(in its capacity as the NLSO)**

and

**[NETWORK CUSTOMER]**

**PRO FORMA TRANSMISSION SERVICE AGREEMENT  
FOR NETWORK INTEGRATION TRANSMISSION SERVICE**

●, 2018

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**THIS NEWFOUNDLAND AND LABRADOR TRANSMISSION SERVICE AGREEMENT FOR NETWORK INTEGRATION TRANSMISSION SERVICE** is made effective the [●] day of [●], 2018 (the "Effective Date")

**BETWEEN:**

**NEWFOUNDLAND AND LABRADOR HYDRO**, a body corporate existing pursuant to the *Hydro Corporation Act, 2007*, being Chapter H-7 of the *Statutes of Newfoundland and Labrador, 2007* ("**NLH**") acting in its capacity as the **Newfoundland and Labrador System Operator** ("**NL System Operator**" or "**Transmission Provider**")- and -

[NAME OF **NETWORK CUSTOMER**] ("[\_\_\_\_]" or "**Network Customer**")

**WHEREAS:**

- A. NL System Operator (Transmission Provider) is acting as an agent for participating transmission owners in operating the NL Transmission System, including the administration and provision of Transmission Service pursuant to the Multi-Party Pooling Agreement;
- B. Network Customer seeks Transmission Service to support the integrated and economic dispatch of Energy and Capacity from its designated Network Resources to its designated Network Load; and
- C. The application for Transmission Service and granting of Transmission Service provided herein is made in accordance with the NL Transmission Policies and Procedures.

**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 1.1(h)**, in the Schedules:

"**Affiliate**" means with respect to an Entity, each such other Entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such Entity;

"**Agreement**" means this agreement, including all Schedules, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

"**Ancillary Services**" means those services that are necessary to support the transmission of Capacity and Energy from resources to Loads while maintaining Reliable operation of the NL Transmission System in accordance with Good Utility Practice;

"**Applicable Law**" means 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;

"**Authorized Authority**" means, in relation to an Entity, 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, other than the NLSO, 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 Entity, 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 Entity, property, transaction or event;

"**Available Transfer Capability**" or "**ATC**" means the transfer capability remaining in a physical transmission network for further commercial activity over and above already committed uses;

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

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

"**Capacity**" means the capability to provide Energy, measured and expressed in MW;

"**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;

"**Confidential Information**" means information and/or data that has been designated by either the Transmission Provider or Network Customer to be proprietary and confidential, provided that such designation is consistent with the NL Transmission Policies and Procedures and NLSO Code of Conduct;

"**Control**" of an Entity means the possession, direct or indirect, of the power to elect or appoint a majority of such Entity's board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Entity, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, an Entity shall be deemed to "**Control**" any partnership of which, at the time, the Entity 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);

**"Control Area"** means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

- i. Match, at all times, the power output of the generators within the electric power system(s) and Energy and Capacity purchased from entities outside the electric power system(s), with the Load within the electric power system(s);
- ii. Maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;
- iii. Maintain the frequency of the electric power system(s) within reasonable limits in accordance with Good Utility Practice; and
- iv. Provide sufficient generating Capacity to maintain Operating Reserves in accordance with Good Utility Practice;

**"Corporations Act"** means the Corporations Act, RSNL1990 CHAPTER C-36;

**"Curtail"** or **"Curtailment"** means a reduction in Transmission Service in response to a transfer capability shortage as a result of system Reliability conditions;

**"Delivering Party"** means the Entity supplying the Capacity and Energy to be transmitted at the Point(s) of Receipt;

**"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 12.1**;

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

**"Energy"** means electrical energy measured and expressed in MWh;

**"Entity"** 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;

**"Excise Tax Act"** means the *Excise Tax Act*, R.S.C. 1985, c. E-15;

**"Federal"** means of or relating to a form of government in which power is shared between a central government and individual states, provinces, etc.;

**"Firm Point-to-Point Transmission Service"** means Point-to-Point Transmission Service between a specific Point of Receipt and Point of Delivery that is reserved and/or scheduled on a firm basis;

**"Force Majeure"** means an event, condition or circumstance (each an **"Event"**) beyond the reasonable control and without the 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, an 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) An accident causing material physical damage to, or materially impairing the operation of, or access to, the NL Transmission System; and
- (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, license, certificate or authorization from any Authorized Authority, 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, license, certificate or authorization;

but none of the following shall be a Force Majeure:

- (i) Lack of finances or changes in economic circumstances of a Party;
- (ii) If the Event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure; and
- (iii) Any delay in the settlement of any Dispute;

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

**"Good Utility Practice"** means those practices, methods or acts (including but not limited to the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry in North America) that at a particular time, in the exercise of reasonable judgment, would have been expected to accomplish the desired result in a manner consistent with regulations, Reliability, safety, environmental protection, economy and expedition as applied and practiced in the utility industry with respect to power generation, delivery, purchase and sale. Good Utility Practice is not intended to be the optimum practice, method or act to the exclusion of others, but



rather to be acceptable practices, methods, or acts generally accepted in such electric utility industry. 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;

"**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 7.3(a)**;

"**Indemnitor**" has the meaning set forth in **Section 1.1(a)**;

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

- (a) An order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) Such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a Notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer, 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 Entity, 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, 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 thirty (30) calendar 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 thirty (30) calendar 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 thirty (30) calendar 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;

**"Interrupt"** or **"Interruption"** means a reduction in Non-Firm Point-to-Point Transmission Service due to economic reasons as further described in **Section 3.4(d)**;

**"Island Interconnected System"** means the bulk energy transmission system on the island portion of NL, as detailed in **Appendix A**, operating at a voltage level of 230 kV or higher but, for greater certainty, excluding any part of the Labrador-Island Link or the high voltage direct current portion of the Maritime Link transmission line owned by NSP Maritime Link Incorporated;

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

**"Labrador-Island Link"** or **"LIL"** means the transmission facilities to be constructed and operated to transmit Energy and Capacity between central Labrador and Soldiers Pond, NL as detailed in **Appendix A**;

**"Labrador Transmission Assets"** or **"LTA"** means the transmission facilities to be constructed and operated to transmit Energy and Capacity between the Muskrat Falls generating facility and the generating plant located at Churchill Falls, NL as detailed in **Appendix A**;

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

**"LIL Lease"** means the lease of the Labrador-Island Link pursuant to a lease agreement between the Labrador-Island Link Limited Partnership, Labrador-Island Link Operating Corporation and NLH, dated November 29, 2013;

**“Load”** means an end-use device or customer that receives power from the electric system;

**“Load Ratio Share”** means the ratio of a Transmission Customer’s Network Load to the Transmission Provider’s total Load, where the Transmission Customer’s monthly Network Load is its hourly Load (including its designated Network Load not physically interconnected with the Transmission provider) coincident with the Transmission Provider’s Monthly Transmission System Peak, and where the Transmission Provider’s monthly transmission Load is the Transmission Provider’s Monthly Transmission Peak minus the coincident peak usage of all Firm Point-to-Point Transmission Service customers plus the Reserved Capacity of all Firm Point-to-Point Transmission Service customers;

**“Losses”** means any and all losses (other than Transmission Losses addressed in **Section 3.4(g)**), damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

**“MW”** means megawatt(s);

**“MWh”** means MW hours;

**“Maritime Link”** or **“ML”** means the transmission facilities to be constructed and operated to transmit Energy and Capacity between NL and Nova Scotia and interconnecting with the NL Transmission System at [Bottom Brook, NL] as detailed in **Appendix A**;

**“Multi-Party Pooling Agreement”** or **“MPPA”** means the agreement, first executed on April 13, 2015, which provides for the pooling of certain bulk transmission facilities within NL under the operational control of the NLSO for the purposes of providing open access and non-discriminatory Transmission Service;

**“Network Customer”** has the meaning set forth in the preamble to this Agreement;

**“Network Integration Transmission Service”** means service over the NL Transmission System that allows for integrated and economic dispatch of Energy and Capacity from a Network Customer’s designated Network Resources to meet such Network Customer’s designated Network Load;

**“Network Load”** means the total aggregate Load designated and served by the Network Customer for which Network Integration Transmission Service is requested;

**“Network Resource”** means a generating resource that has been designated by a Network Customer to serve Network Load in accordance with **Section 2.1**;

**“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;

**“NL”** means the Province of Newfoundland and Labrador;

"**NL Control Area**" means the combined facilities comprising the NL Transmission System as further detailed in **Appendix A** to this Agreement;

"**NL Crown**" means Her Majesty the Queen in Right of NL;

"**NLH**" means Newfoundland and Labrador Hydro, a corporation continued pursuant to the *Hydro Corporations Act, 2007*, S.N.L. 2007, c. H-17, and includes its successors and permitted assigns;

"**NL Native Load**" means those entities, including both retail and wholesale customers, on whose behalf NLH, by statute, franchise or contract, has undertaken the obligation to plan, construct, and operate its system to provide Reliable delivery of Energy and Ancillary Services;

"**NL Point**" means a scheduling point representing the pool of resources and Load within the NL Transmission System that may be used as a Point of Receipt for Point-to-Point Transmission Service out of the NL Transmission System and/or a Point of Delivery for Point-to-Point Transmission Service into the NL Transmission System;

"**NL Reliability Standards**" means the criteria, standards and requirements relating to the Reliability of the NL Transmission System which have been adopted;

"**NLSO**" or "**NL System Operator**" means the Entity responsible for the safe and Reliable operation of the NL Transmission System, including the administration and provision of Transmission Service pursuant to the Multi-Party Pooling Agreement;

"**NLSO OASIS**" means the Open Access Same-Time Information System maintained by the NLSO;

"**NL Taxes**" means Taxes imposed by an Authorized Authority under the Applicable Law of NL, except income Taxes and, for greater certainty, HST and all other Federal or international Taxes;

"**NL Transmission Policies and Procedures**" has the meaning set forth at **Section 3.4(a)**;

"**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 Island Interconnected System, but excluding the high voltage direct current portion of the Maritime Link transmission line owned by NSP Maritime Link Incorporated, all as detailed in **Appendix A**;

"**Non-Firm Point-to-Point Transmission Service**" means Point-To-Point Transmission Service that is reserved and/or Scheduled on an as-available basis for periods ranging from one hour to one month, and is subject to Curtailment or Interruption as set forth in **Section 3.4(e)**;

"**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 13.1**;

"**Open Access Same-Time Information System (OASIS)**" means real time information sharing system used to communicate with Transmission Customers, provide transmission system

information, process requests for Transmission Service and post certain Code of Conduct requirements;

**"Operating Reserve"** means that capability above firm system demand required to provide for regulation, Load forecasting error, equipment forced and scheduled outages and local area protection;

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

**"Planned Maintenance Period"** means a period of planned total or partial outage of a transmission facility that is necessary for the inspection, testing, repair, maintenance, overhaul, or modification of a component of the NL Transmission System;

**"Point(s) of Delivery"** means the point(s) on the NL Transmission System specified in **Section 2.1(e)** of this Agreement where the Capacity and Energy transmitted by Transmission Provider will be made available to Network Customer pursuant to this Agreement;

**"Point(s) of Receipt"** means the point(s) on the NL Transmission System specified in **Section 2.1(e)** of this Agreement at which the Capacity and Energy will be received from the Transmission Customer by Transmission Provider for transmittal pursuant to this Agreement;

**"Point-to-Point Transmission Service"** means the reservation and transmission of Capacity and Energy on a firm or non-firm basis from the Point(s) of Receipt to the Point(s) of Delivery pursuant to this Agreement;

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

**"Rate Year"** is the calendar year period January 1 through December 31;

**"Reactive Supply and Voltage Control"** has the meaning set forth in **Section 3.7(a)**;

**"Reference Period"** has the meaning set forth in **Section 3.4(g)(ii)**;

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

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

**"Reliable"** or **"Reliability"** means the degree of performance of the electric power system that results in Energy being delivered within applicable NL Reliability Standards and in the amount desired, taking into consideration (i) the adequacy of the system with respect to the ability of the electric system to reliably and safely meet electric demand and supply Energy at all times, taking into account planned and unplanned outages of system elements and (ii) the security of the system with respect to the ability of the electric system to withstand disturbances such as electric short circuits or unanticipated loss of system elements;

**"Reserved Capacity"** means the maximum amount of Capacity and Energy that the NLSO agrees to transmit for a Firm Point-to-Point Transmission Service Customer over the NL Transmission System between the Point(s) of Receipt and the Point(s) of Delivery and shall be expressed in terms of whole MWs on a sixty (60) minute interval (commencing on the clock hour) basis;

**"Safety Event"** means an event which causes Transmission Provider to suspend the provision of Transmission Service for the purpose of safeguarding life or property in accordance with Good Utility Practice;

**"Schedule"**, **"Scheduled"** and **"Scheduling"** means all acts necessary to schedule, or cause to be scheduled, the transmission and delivery of Energy and Capacity over the NL Transmission System as provided for in this Agreement;

**"Scheduling, System Control and Dispatch Service"** means those administrative services required to Schedule and coordinate the movement of power across the NL Control Area;

**"Service Term"** has the meaning set forth in **Section 0(a)**;

**"System Conditions"** means a specified condition on the NL Transmission System, or on a neighbouring system, such as a constrained element or flowgate, that may trigger Curtailment of Transmission Service;

**"System Impact Study"** means an assessment by the NLSO regarding: (i) the adequacy of the NL Transmission System to accommodate a request for Firm Point-To-Point Transmission Service, or Network Integration Transmission Service; and (ii) whether any additional costs may be incurred to provide Transmission Service;

**"Tariff Charges"** means any charges arising pursuant to a tariff or other schedule of fees in respect of electricity transmission services;

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

**"Third Party"** means any Entity that does not Control, is not Controlled by and is not under common Control with the applicable Party;

**"Total Transfer Capability"** or **"TTC"** means the amount of electric power that can be moved or transferred reliably from one area to another area of an interconnected transmission system by way of all transmission lines (or paths) between those areas under specified System Conditions;

"**Transmission Customer**" means an Entity that is receiving Point-to-Point Transmission Service or Network Integration Transmission Service from the Transmission Provider;

"**Transmission Funding Credit**" means a billing credit equal to the amount of payments made by the Network Customer to a Transmission Owner pursuant to other agreements or legal obligations for the capital, operating or maintenance costs of one or more transmission facilities that are integrated into the NL Transmission System. The management and accounting (including accrual and use) of such billing credits shall be carried out in accordance with **Schedule 2** of this Agreement;

"**Transmission Losses**" means the total of Energy Losses on the NL Transmission System, as determined in accordance with **Section 3.4(g)** and **Schedule 1**;

"**Transmission Loss Factor**" has the meaning set forth in **Schedule 1**;

"**Transmission Owner**" means an Entity that owns transmission facilities which are designated as part of the NL Transmission System pursuant to the MPPA;

"**Transmission Provider**" has the meaning set forth in the recitals to this Agreement and includes Transmission Provider's successors and permitted assigns;

"**Transmission Provider's Monthly Transmission System Peak**" means the maximum firm usage of the NL Transmission System in a calendar month;

"**Transmission Service**" means the delivery of Energy and Capacity on a network or point-to-point basis as described in the NL Transmission Policies and Procedures and further provided for under this Agreement; and

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

## **1.2 Construction of Agreement**

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

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

- (c) "Including" - The word "including," when used in this Agreement, means "including without limitation."
- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with GAAP, unless expressly stated otherwise.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the Effective Date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning set forth 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, dated 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, unless the context requires otherwise.
- (j) Time Falling on a Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and



agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be "approved" "decided" or "determined" by a Party or requires a Party's "consent," then (i) such approval, decision, determination or consent by a Party shall be in writing, and (ii) such Party shall be free to take such action having regard to that Party's own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements – Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing. In the event that the Parties are unable to reach agreement where agreement is required, such dispute shall be resolved pursuant to the dispute resolution procedures set forth in Article 12. Provided however, during efforts to reach agreement under this section or any further dispute resolution on the failure to agree, the NLSO shall have the right, consistent with Good Utility practice, to take such actions as are necessary in the provision of transmission service consistent with the terms of this Agreement and the Reliable operation of the NL Transmission System.
- (n) References to Other Agreements – Any reference in this Agreement to another agreement, instrument or other document will be deemed to be a reference to such agreement, instrument or other document as modified, amended, supplemented and restated (including changes to section numbers reference herein) in accordance with the provisions of such agreement 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 and Application of NL Transmission Policies and Procedures**

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 regarding the provision of Network Integration Transmission Service, the provision of the body of this Agreement shall prevail. In the event of any conflict or ambiguity between this Agreement and the NL Transmission Policies and Procedures, the provisions of the NL Transmission Policies and Procedures shall be controlling.

### **1.4 Applicable Law and Submission to Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of NL, and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 12**, 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 and Appendices**

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

### Schedules

- Schedule 1 – Calculation of Transmission Losses
- Schedule 2 – Network Integration Transmission Service Rates and Charges
- Schedule 3 – Ancillary Services

### Appendices

- Appendix A - Newfoundland and Labrador Transmission Facilities
- Appendix B - Commercial Arbitration Code
- Appendix C - Form of Assignment Agreement

## **ARTICLE 2**

### **SPECIFICATIONS FOR NETWORK INTEGRATION TRANSMISSION SERVICE**

**2.1 Terms of Network Integration Transmission Service.** Transmission Provider shall arrange for and/or coordinate the operation and maintenance of the NL Control Area, in accordance with the NL Transmission Policies and Procedures as well as Good Utility Practice, in order to allow Network Customer to economically dispatch and regulate its designated Network Resources to serve designated Network Load within the NL Control Area in accordance with the following terms:

(a) Term of Agreement:

Transmission Provider agrees to provide and Network Customer agrees to take and pay for Network Integration Transmission Service in accordance with the terms of this Agreement until the later of (i) termination of the LIL Lease or (ii) termination of Network Customer's obligation to serve NL Native Load; subject to the extension of the service term by mutual agreement of the parties (the "**Service Term**").

(b) Designation of Network Resources: Network Integration Transmission Service shall be provided for the delivery of Capacity and Energy from Network Resources to serve Network Load. Except as provided under **Section 2.1(b)(i)**, Network Customer must demonstrate that it owns or has committed to purchase generation pursuant

to an executed contract in order to designate a generating resource as a Network Resource. A Network Resource shall not include any resource, or any portion thereof, that is committed for sale to third parties or otherwise cannot be called upon to meet Network Customer's Network Load on a non-interruptible basis. For purposes of such service, the designation of Network Resources shall be in accordance with the following terms:

- (i) *Existing Generation*: Unless Network Customer otherwise elects and notifies the Transmission Provider, all generation facilities and related resources owned by, contracted to, controlled or operated by Network Customer as of the Effective Date of this Agreement shall be designated as Network Resources. For greater certainty, the firm, non-interruptible energy supply agreement(s) for delivery of energy from the Churchill Falls (Labrador) Corporation generation facility that are in effect as of the Effective Date of this Agreement may be designated by Network Customer as a Network Resource.
- (ii) *New Generation*: In order to designate a new Network Resource, Network Customer shall provide written Notice to Transmission Provider with sufficient engineering and technical information necessary to permit Transmission Provider to study the transmission requirements associated with such new Network Resource all as consistent with the requirements set forth in the NL Transmission Policies and Procedures. Such designation of a new Network Resource shall be subject to the availability of sufficient capacity on the NL Transmission System to allow for the Reliable delivery of Energy and Capacity to Network Load, including where required, the construction of any new transmission facilities or upgrades to ensure deliverability of Energy and Capacity from the new Network Resource to Network Load.
- (iii) *Resources Purchased from Third Party Utilities*: Network Customer may designate as a Network Resource, Capacity and Energy purchased from a Third Party to serve Network Load, including from external resources, subject to any reserve margin established pursuant to **Section 2.1(d)**. To the extent that Third Party resource is located outside of the NL Control Area, Network Customer shall have the sole responsibility to Schedule such Capacity and Energy for delivery to the NL Transmission System and to make any arrangements with applicable external Control Areas for Transmission Service and schedules supporting the delivery of such capacity and energy.
- (iv) *Partial Designation of a Network Resource*: Upon the initial designation, or thereafter, upon Notice of no less than the Scheduling deadline for the period of termination as set forth in the NL Transmission Policies and Procedures, Network Customer may designate as a Network Resource an amount of generating capability from a resource that is less than its maximum net dependable capability. The portion of the resource's

generating capability that is not designated as a Network Resource shall not be delivered under this Agreement.

- (v) *Termination of a Network Resource:* Network Customer may terminate the designation of all or part of a generating resource as a Network Resource by providing notification to Transmission Provider as soon as reasonably practicable, but not later than the firm Scheduling deadline for the period of termination as set forth in the NL Transmission Policies and Procedures. Any request for termination of Network Resource status must be submitted in writing to Transmission Provider and indicate whether the request is for indefinite or temporary termination.
  - (A) A request for indefinite termination of Network Resource status must indicate the date and time that the termination is to be effective, and the identification and Capacity of the resource(s) or portions thereof to be indefinitely terminated.
  - (B) A request for temporary termination of Network Resource status must include the following:
    - (i) Effective date and time of temporary termination;
    - (ii) Effective date and time of redesignation, following period of temporary termination;
    - (iii) Identification and Capacity of resource(s) or portions thereof to be temporarily terminated;
    - (iv) Resource description and attestation for redesignating the Network Resource following the temporary termination, in accordance with the NL Transmission Policies and Procedures; and
    - (v) Identification of any related Transmission Service requests to be evaluated together with the request for temporary termination, such that the requests for undesignation and the request for these related Transmission Service requests must be approved or denied as a single request. The evaluation of these related Transmission Service requests must take into account the termination of the Network Resources identified in (iii) above, as well as all competing Transmission Service requests of higher priority.

As part of a temporary termination, Network Customer may only redesignate the same resource that was originally designated, or a portion thereof. Requests to redesignate a different resource and/or a resource with increased capacity will be deemed deficient and Transmission Provider will follow the procedures for a deficient application as described in the NL Transmission Policies and Procedures.

- (c) Network Load: Prior to the commencement of service, and thereafter on a monthly and annual basis, Network Customer shall provide to Transmission Provider its best estimate of the total Loads to be served at each transmission voltage level, and, if known, the Loads to be served from each substation at the same transmission voltage level. The designation of Network Load on a monthly and annual basis shall be made in accordance with NL Transmission Policies and Procedures; with the designation of Network Load on a monthly basis occurring no less than ten (10) calendar days prior to the beginning of the next month and designation of Network Load on an annual basis occurring no less than thirty (30) calendar days prior to January 1.

Network Customer may elect to designate less than its total Load as Network Load but may not designate only part of the Load at a discrete Point of Delivery. Where Network Customer has elected not to designate a particular Load at discrete points of delivery as Network Load, Network Customer is responsible for making separate arrangements for any Point-To-Point Transmission Service that may be necessary for such non-designated Load.

- (d) Reserve Margin: Transmission Provider may require Network Customer to designate an amount (in MW) of Network Resources necessary to provide for the Reliable operation of the NL Control Area, with an installed reserve margin of up to 25% in excess of Network Customer's reasonably forecasted Network Load.
- (e) Points of Receipt and Delivery:
- (i) *Point of Receipt*: The Point of Receipt shall be the point where a designated Network Resource interconnects with the NL Transmission System.
  - (ii) *Point of Delivery*: The Point of Delivery shall be the points where the Network Customer's distribution system or its wholesale customer is interconnected to the NL Transmission System.
- (f) Scheduling Party: For the purposes of this Agreement, Network Customer (or an agent to the Network Customer that has been designated and approved to exercise Scheduling rights pursuant to the NL Transmission Policies and Procedures) shall have the right to designate Network Resources or Network Load and otherwise submit requests for the Scheduling of Network Integration Transmission Service pursuant to this Agreement and as set forth in the NL Transmission Policies and Procedures.
- (g) Termination: This Agreement shall terminate on the earliest to occur of any of the following events:
- (i) Written agreement of the Parties to terminate;
  - (ii) Default pursuant to **Article 6**; or

(iii) Expiration of the Service Term, as set forth in **Section 2.1(a)**.

## **2.2**            **Deferral of Service**

Transmission Provider may defer the initiation and provision of Network Integration Transmission Service pursuant to this Agreement until construction has been completed on new transmission facilities or upgrades that are needed to provide Network Integration Transmission Service. The obligation to provide Network Integration Transmission Service pursuant to this Agreement is deferrable when the Transmission Provider determines that providing the requested service without such new facilities or upgrades would impair or degrade the Reliability of the NL Control Area.

## **2.3**            **Assignment**

Except as provided for under **Section 11.1**, the rights to Network Integration Transmission Service held by Network Customer pursuant to this Agreement shall not be subject to assignment.

# **ARTICLE 3 GENERAL TERMS OF SERVICE BETWEEN TRANSMISSION PROVIDER AND NETWORK CUSTOMER**

## **3.1**            **Network Integration Transmission Service**

Subject to the provisions of this Agreement, Network Integration Transmission Service shall be achieved through the provision of Transmission Service over the NL Transmission System to Network Customer for the delivery of Capacity and Energy from its designated Network Resources to service its designated Network Load. In the event of Curtailment of Scheduled Energy and Capacity under the reservation for Network Integration Transmission Service, Network Customer shall have the status set forth in **Section 3.4(e)**, as further implemented under the NL Transmission Policies and Procedures.

## **3.2**            **Secondary Service**

Network Customer may use the NL Transmission System to deliver energy to its Network Loads from resources that have not been designated as Network Resources. Such energy shall be transmitted, on an as-available basis, at no additional charge. Secondary service shall not require the filing of a new application for Transmission Service. However, all other requirements of this Agreement and the NL Transmission Policies and Procedures (except for transmission rates) shall apply to secondary service. Deliveries from resources other than Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under **Section 3.4(e)** of this Agreement.

## **3.3**            **Rates and Charges**

- (a) In respect to the provision of Network Integration Transmission Service, Network Customer agrees to pay the rate(s) as posted on the NLSO OASIS, as further described in **Schedule 2** and **Schedule 3**, as well as all other charges applicable to the provision of Network Integration Transmission Service provided under this Agreement.
- (b) Monthly Charges for Network Integration Transmission Service: Network Customer's monthly payment owed for the provision of Network Integration Transmission Service shall be a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement.
- (c) Ancillary Services: Network Customer agrees to take and pay for Ancillary Services, as further described in **Section 3.7**, supporting the transfer and delivery of Scheduled Energy and Capacity under this Agreement pursuant to the rates as posted on the NLSO OASIS, as further described in **Schedule 2** for Scheduling, System Control and Dispatch Service **and Schedule 3** for all other Ancillary Services.
- (d) Process for Changes in Rates: Changes to the rates shall be adopted pursuant to the rate change procedures set forth in the NL Transmission Policies and Procedures and in accordance with Applicable Law.
- (e) Transmission Funding Credit: Network Customer shall be eligible for a Transmission Funding Credit offsetting charges under this Agreement to the extent that Network Customer, pursuant to other agreements or legal obligations, has made documented payments for capital or operating costs of transmission facilities that are integrated into the NL Transmission System and the costs of such transmission facilities are otherwise included in Transmission Provider's Annual Transmission Revenue Requirement for Network Integration Transmission Service or Ancillary Services, as applicable. Documentation and calculation of such Transmission Funding Credit shall be conducted pursuant to **Schedule 2**. For the avoidance of doubt, the Transmission Funding Credit shall not apply to: (i) charges for Non-Firm Point-to-Point Transmission Service; or (ii) charges for Scheduling, System Control and Dispatch Service.
- (f) True-Up Charges: Pursuant to the process and deadlines established in the NL Transmission Policies and Procedures, Transmission Provider shall determine a true-up revenue requirement adjustment to reflect the difference between the charges collected from customers for the provision of Firm Point-to-Point Transmission Service or Network Integration Transmission Service, as applicable, during the Rate Period. Any true-up revenue requirement adjustment for the Rate Year will be addressed pursuant to the process established in the NL Transmission Policies and Procedures and shall reflect the results of any PUB order on review or implementation of such true-up charges.

### **3.4 General Terms and Conditions of Service**

Transmission Provider shall provide Network Integration Transmission Service to Network Customer over the NL Transmission System under the following general terms and conditions of service:

(a) Transmission Procedures

Transmission Provider shall adopt and post on the NLSO OASIS any necessary administrative rules and practices required for the administration of Transmission Service over the NL Transmission System ("**NL Transmission Policies and Procedures**").

(b) Calculation and Posting of ATC and TTC

Transmission Provider shall calculate and post on the NLSO OASIS, ATC and TTC over the NL Transmission System, using a methodology for assessing ATC and TTC that is in accordance with Good Utility Practice and the NL Transmission Policies and Procedures.

(c) Reservation Priorities

The reservation priorities for scheduling and delivery for Energy and Capacity over the NL Transmission System set forth herein this **Section 3.4(c)** shall apply to any Network Integration Transmission Service provided pursuant to this Agreement as follows:

- (i) Network Integration Transmission Service and Firm Point-to-Point Transmission Service shall have equal reservation priority.
- (ii) Network Integration Transmission Service and Firm Point-to-Point Transmission Service shall have a reservation priority over Non-Firm Point-to-Point Transmission Service.
- (iii) Network Integration Transmission Service from secondary resources other than designated Network Resources will have a higher priority than any Non-Firm Point-to-Point Transmission Service.
- (iv) Non-Firm Point-to-Point Transmission Service shall be available from ATC, as posted by the NLSO on the NLSO OASIS, in excess of that Scheduled by Network Customers holding reservations for Network Integration Transmission Service or Firm Point-to-Point Transmission Service. Except as noted in **Section 3.4(c)(vi)**, the priority assigned to a request for Non-Firm Point-to-Point Transmission Service shall be given to the requested service (e.g., monthly, daily, hourly) with the longest duration. An existing Transmission Customer holding a reservation for Non-Firm Point-to-Point Transmission Service shall have the right of first refusal to match any longer term request before being pre-empted. A longer term competing request for Non-Firm Point-to-Point Transmission Service will be granted if the



existing Transmission Customer does not agree to match the competing request: (a) immediately for hourly Non-Firm Point-to-Point Transmission Service after notification by the Transmission Provider; and (b) within 24 hours (or earlier if necessary to comply with scheduling deadlines) for Non-Firm Point-to-Point Transmission Service other than hourly transactions after notification by the Transmission Provider.

- (v) Non-Firm Point-to-Point Transmission Service over secondary point(s) of receipt and point(s) of delivery will have the lowest reservation priority, without regard to the duration of such reservation.

(d) Scheduling of Transmission Service

- (i) Scheduling of the Network Integration Transmission Service provided by Transmission Provider to Network Customer pursuant to this Agreement shall be conducted on a Day-Ahead and Real-Time basis in accordance with the NL Transmission Policies and Procedures.
- (ii) Any scheduling arrangements that may be required by other electric systems for the delivery or receipt of Energy or Capacity under this Agreement shall be the sole responsibility of the Network Customer.

(e) Curtailement or Interruption of Transmission Service

(i) Curtailement:

Transmission Provider reserves the right to Curtail, in whole or in part, Transmission Service provided under this Agreement when an emergency or other unforeseen condition threatens to impair or degrade the Reliability of the NL Control Area or the neighbouring Control Areas directly interconnected with the NL Transmission System.

Where required, Curtailments will be made on the basis of priority set forth in **Section 3.4(e)(ii)**, with Notice and administration of such Curtailments occurring pursuant to the NL Transmission Policies and Procedures. Transmission Provider will ensure that Network Customer is provided with advance Notice of Curtailement where such Notice can be provided consistent with Good Utility Practice and the NL Transmission Policies and Procedures. In the event that Network Customer fails to take any actions necessary to implement or respond to a Curtailement within the period for response requested by Transmission Provider, Network Customer shall pay, in addition to any other charges for service, a charge equal to two (2) times the amount of Transmission Service which Network Customer fails to Curtail multiplied by the maximum charge for Network Integration Transmission Service for the lesser of the transaction term or one month.

- (ii) Priority for Curtailement of Service for NL Control Area Conditions:

In the event that a Curtailment of Transmission Service is required for conditions occurring within the NL Control Area, such Curtailment of Transmission Service shall be carried out in the following priority, up to the level required to effectively relieve the identified constraint:

- (A) First, Curtailment of any Non-Firm Point-to-Point Transmission Service reservation on the basis of duration of the reservation (e.g., hourly non-firm transactions will be Curtailed before daily non-firm transactions and daily non-firm transactions will be Curtailed before weekly non-firm transactions) and, as between transmission customers holding the same duration of Non-Firm Point-to-Point Transmission Service reservations, on a pro rata, non-discriminatory basis; and
- (B) Thereafter, if required, Curtailment will be implemented on a non-discriminatory basis to the Scheduled transactions using Network Integration Transmission Service and Firm Point-to-Point Transmission Service that most effectively relieve the constraint, consistent with the NL Reliability Standards.

- (iii) Reductions in Schedules for Curtailment or Interruption Related to External System Conditions:

In the event that the Transmission Provider is notified of an emergency or other unforeseen condition that exists in a neighbouring Control Area that requires Curtailment of deliveries over the NL Transmission System, schedules for Transmission Service over the NL Transmission System shall be Curtailed consistent with the Curtailment or Interruption of deliveries required by the applicable external Control Area operator.

- (f) Suspension for System Reliability

Transmission Provider shall have the right to suspend the provision of Network Integration Transmission Service provided for under this Agreement without breaching this Agreement or incurring liability to Network Customer in the event of a Planned Maintenance Period, a Safety Event or where doing so is required by Good Utility Practice, but all such suspensions shall be of a minimum duration and for as limited of a reduction in Delivery of Energy as required given the circumstances, and when possible, and when consistent with Good Utility Practice, be arranged for a time least inconvenient to Network Customer, acting reasonably.

- (g) Transmission Losses

- (i) Responsibility for Transmission Losses:

Network Customer shall be responsible for Transmission Losses over the NL Transmission System for deliveries of Energy pursuant to this Agreement.

(ii) Transmission Loss Factors:

The applicable Transmission Loss Factor for the NL Transmission System shall be established in accordance with **Schedule 1** attached to this Agreement. The Transmission Loss Factor to be applied for the NL Transmission System in each month will be the ratio of the total Transmission Losses in the NL Transmission System to the total energy received into the NL Transmission System for the twelve (12) month period ending immediately prior to the calendar month preceding the given month (the "**Reference Period**"), as described in greater detail in **Schedule 1**.

(iii) Testing and Adjustments:

Consistent with NL Transmission Policies and Procedures, Transmission Provider shall test the NL Control Area on a monthly basis to confirm the Transmission Loss Factor based on the most recent twelve (12) month average Transmission Loss Factor. Following each test, the Transmission Loss Factor shall be adjusted to the tested level and applied during the following month. There shall be no retroactive adjustments.

(h) Metering

(i) Responsibility for Metering and Communications Equipment:

Transmission Provider shall ensure that compatible metering and communications equipment has been installed and is maintained in order to provide for accurate accounting of the Energy and Capacity transmitted pursuant to this Agreement.

(ii) Measurement:

The measurement of Energy and Capacity transmitted pursuant to this Agreement shall be made by the Transmission Provider in accordance with the NL Transmission Policies and Procedures.

(iii) Access to Metering Data:

Upon request, Transmission Provider shall provide to Network Customer access to such metering data as are reasonably required to facilitate confirmation of the delivery of Energy and Capacity by the Transmission Provider pursuant to this Agreement.

### **3.5 Restrictions on Use of Service**

Network Customer ***shall not use*** Network Integration Transmission Service for (i) sales of Capacity and Energy to non-designated Loads, or (ii) the direct or indirect provision of Transmission Service by the Network Customer to another Entity.

### **3.6**            **Use of Interface Capacity**

There is no limitation upon Network Customer's use of the NL Transmission System at any particular interface to integrate its Network Resources with its Network Loads. However, Network Customer's use of the total interface capacity of the NL Control Area with other transmission systems may not exceed Network Customer's designated Network Load.

### **3.7**            **Ancillary Services**

Ancillary Services are needed to support the Reliable transfer and delivery of Energy and Capacity under this Agreement. Transmission Provider shall arrange for the Ancillary Services described in **Section 3.7(a)** through **Section 3.7(e)**. Transmission Customer may procure Regulation and Frequency Response Service, Energy Imbalance Service, Operating Reserve-Spinning Reserve Service or Operating Reserve, Supplemental Reserve Service from a Third Party or by self-supply. If procured from a Third Party or by self-supply, Network Customer must notify Transmission Provider and demonstrate that the procured Ancillary Services are of equal quality to those that would otherwise be provided by Transmission Provider. Network Customer is required to take and pay Transmission Provider for Scheduling, System Control and Dispatch Service and Reactive Supply and Voltage Control as set forth below. To the extent not otherwise provided by a Third Party or by self-supply, Transmission Customer shall take and pay Transmission Provider for all other Ancillary Services as set forth below.

(a)    Scheduling, System Control and Dispatch Service

Network Customer agrees to pay for Scheduling, System Control and Dispatch Service associated with the Scheduling and dispatch of Energy and Capacity within or over the NL Transmission System pursuant to this Agreement. Network Customer shall be responsible for the payment for the costs of such Scheduling, System Control and Dispatch Service pursuant to **Schedule 2**.

(b)    Reactive Supply and Voltage Control

In order to maintain transmission voltages within acceptable limits on the NL Transmission System and its interconnections with neighbouring Control Areas, the production or absorption of reactive power may be required ("**Reactive Supply and Voltage Control**"). Network Customer shall be responsible for payment for such Reactive Supply and Voltage Control, pursuant to **Schedule 3**.

(c)    Regulation and Frequency Response Service

This service provides resources with automatic generator control (AGC) that can help maintain the scheduled interconnection frequency of sixty cycles per second (60 Hz) in response to moment-by-moment changes in Load and other power system conditions. To the extent not procured from a Third Party or by self-supply, Network Customer shall be responsible for payment for such Regulation and Frequency Response, pursuant to **Schedule 3**.

(d) Energy Imbalance Service

This service supplies or withdraws the Energy that is needed to reconcile any mismatch between Network Customer's Energy supplied to or withdrawn from the NL Transmission System in any hour. To the extent not procured from a Third Party or by self-supply, Network Customer shall be responsible for payment for such Energy Imbalance, pursuant to **Schedule 3**.

(e) Operating Reserve – Spinning Reserve Service

This service provides resources that are synchronized to the power system, that can respond within ten (10) minutes to a system contingency, and that can maintain their response for up to sixty minutes. To the extent not procured from a Third Party or by self-supply, Network Customer shall be responsible for payment for such Operating Reserve – Spinning, pursuant to **Schedule 3**.

(f) Operating Reserve – Supplemental Reserve Service

This service provides resources that, regardless of their synchronization, can respond within ten (10) minutes to a system contingency and can maintain their response for up to sixty minutes. To the extent not procured from a Third Party or by self-supply, Network Customer shall be responsible for payment for such Operating Reserve – Supplemental, pursuant to **Schedule 3**.

**3.8 Billing and Payment**

(a) Billing Procedures

Within a reasonable time after the first day of each month, Transmission Provider shall submit an invoice to Network Customer for any required charges during the preceding month. The invoice shall be paid by Network Customer within twenty (20) calendar days of receipt. All payments shall be made in immediately available funds payable to Transmission Provider, or by wire transfer to a bank named by Transmission Provider.

(b) Disputing Invoices

Network Customer must submit a written Notice of a dispute over an invoiced amount within thirty (30) calendar days of receiving the invoice from the Transmission Provider. The invoiced amount must be paid in full during dispute, which shall be resolved according to Dispute Resolution procedures included with this Agreement.

(c) Interest on Unpaid Balances

Interest on any unpaid amounts (including amounts placed in escrow) shall bear interest at the Canadian Prime Rate plus three (3) percent per annum, from the required date of invoice payment set forth in **Section 3.8(a)** to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by Transmission Provider.

(d) Payment During Billing Dispute and Suspension of Service

In the event of a billing dispute between Transmission Provider and Network Customer, Transmission Provider will continue to provide Transmission Service under this Agreement pending resolution of the billing dispute in accordance with this Agreement as long as Network Customer (i) continues to make all payments not in dispute and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. All costs incurred in setting up and maintaining the escrow account is the responsibility of the Transmission Customer. If Network Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide Notice to Network Customer of its intention to suspend service in thirty (30) calendar days.

**3.9** Reciprocity

As a condition to receiving Transmission Service under this Agreement, Network Customer agrees to provide to Transmission Provider and its Affiliates comparable Transmission Service on similar terms and conditions over facilities used for the transmission of Energy in inter-provincial commerce which are owned, controlled or operated by Network Customer or Network Customer's Affiliates. This reciprocity requirement applies not only to Network Customer's receipt of Transmission Service under this Agreement, but also to all parties to a transaction that involves the use of Transmission Service under this Agreement, including a power seller, buyer and any intermediary, such as a power marketer.

**ARTICLE 4**  
**TAXES**

**4.1** Payment of Applicable Taxes

- (a) Payment of Taxes – Except as otherwise provided, each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the collection, payment, withholding, reporting and remittance of all Taxes in accordance with Applicable Law.
- (b) Payment of Applicable Taxes – Subject to **Section 4.1(c)**:
  - (i) To the extent that Taxes are applicable to the provision of Transmission Service or Ancillary Services under this Agreement, including any New Tax, **Network Customer** shall pay or cause to be paid all applicable Taxes thereon. Any applicable Taxes shall be added to rates and charges under this Agreement;

- (ii) If Transmission Provider is required by Applicable Law to remit or pay Taxes which are Network Customer's responsibility hereunder, Transmission Provider shall first offset the amount of Taxes so recoverable from other amounts owing by it to Network Customer under this Agreement, and Network Customer shall promptly reimburse Transmission Provider for such Taxes to the extent not so offset; and
  - (iii) Nothing shall obligate or cause Network Customer to pay or be liable to pay any Tax for which it is exempt under Applicable Law. Network Customer shall promptly inform and provide appropriate documentation to Transmission Provider confirming that Network Customer is exempt from payment of a Tax under Applicable Law.
- (c) HST - Notwithstanding **Section 4.1(a)**, 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 the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;
  - (ii) If subsection 182(1) of the Excise Tax Act applies to any amount payable by one party to the other party pursuant to this Agreement, such amount shall first be increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
  - (iii) If Transmission Provider is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to Network Customer such documentation required pursuant to **Section 4.3**; and
  - (iv) If one Party incurs an expense as agent for the other 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 the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.
- (d) Income Taxes – For greater certainty:
  - (i) Transmission Provider is responsible for the payment of income Taxes and HST payable by Transmission Provider, as the case may be; and
  - (ii) Network Customer and its Affiliates are solely responsible for the payment of income Taxes and HST payable by Network Customer and its Affiliates, as the case may be.

#### **4.2**            **Determination of Value for Tax Compliance Purposes**

- (a) Subject to the right of final determination as provided under **Section 4.2(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

#### **4.3**            **Invoicing Tax Requirement**

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

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

#### **4.4**            **Payment and Offset**

- (a) Subject to **Section 4.4(b)**, Taxes collectable by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within twenty (20) calendar days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.



#### **4.5 HST Registration Status and Residency**

- (a) Network Customer represents and warrants that it is registered for purposes of the HST and that its registration number is ●, and undertakes to advise Transmission Provider of any change in its HST registration status or number.
- (b) Transmission Provider represents and warrants that it is registered for purposes of the HST and that its registration number is ●, and undertakes to advise Network Customer of any change in its HST registration status or number.
- (c) Each of the Parties represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act and undertakes to advise the other Party of any change in its residency status.

#### **4.6 Cooperation to Minimize Taxes**

Each Party shall use commercially reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Laws, so long as neither Party is materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Laws in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).

#### **4.7 Additional Tax Disclosure**

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

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

In addition to the notification required under this Section, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Section 4.7 (a)** through **Section 4.7(c)**.

#### **4.8**                    **Prohibited Tax Disclosure**

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

#### **4.9**                    **Withholding Tax**

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

#### **4.10**                   **Tax Indemnity**

Each Party (in this section referred to as the "**First Party**") shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 4** 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 4.1(b)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

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

#### **4.11 Additional Tax Indemnity**

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

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

#### **4.12 Assignment – Tax Requirements**

Notwithstanding any other provision in this Agreement, except as otherwise agreed to by the Parties in writing, a Party shall not assign any of its interest in this Agreement pursuant to **Article 11** to another Entity unless:

- (a) The Entity is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such Assignment;
- (b) If the Entity has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Entity; and
- (c) The Entity agrees, in writing, to comply with the provisions of this **Article 4**.

### **ARTICLE 5 FORCE MAJEURE**

#### **5.1 Procedure during Force Majeure**

If by reason of an event of Force Majeure, a Party is not reasonably able to fulfill an obligation, other than an obligation to pay or spend money, in accordance with the terms of this Agreement, then such Party shall:

- (a) Forthwith to provide Notice to the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written

confirmation of an oral Notice) shall provide reasonably full particulars of such Force Majeure;

- (b) Be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the failure to perform so caused, from and after the occurrence of such Force Majeure;
- (c) Employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;
- (d) As soon as reasonably possible after such Force Majeure, fulfill or resume fulfilling its obligations hereunder;
- (e) Provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and
- (f) Not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.

## **5.2 Notices of Force Majeure**

Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a duration of less than twenty-four (24) hours shall be given to an operational representative of the receiving Party. Each Party shall provide telephone and other electronic contact information to the other for the purposes of this **Section 5.2** prior to the commencement of service under this Agreement. Either Party may change such contact information from time to time by giving Notice of such change to the other Party in accordance with **Section 13.1**.

## **ARTICLE 6 DEFAULT AND REMEDIES**

### **6.1 Transmission Provider Events of Default**

Except to the extent excused as a result of an event of Force Majeure, the occurrence of one or more of the following events shall constitute a default by Transmission Provider under this Agreement (a "**Transmission Provider Default**"):

- (a) Transmission Provider is in default or in breach of any term, condition or obligation under this Agreement, and, if the default or breach is capable of being cured, it continues for thirty (30) calendar days after the receipt by Transmission Provider of Notice thereof from Network Customer, unless the cure reasonably requires a

longer period and Transmission Provider is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Network Customer;

- (b) Any representation or warranty made by Transmission Provider in this Agreement is false or misleading in any material respect;
- (c) Transmission Provider 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
- (d) An Insolvency Event.

## **6.2 Network Customer Remedies upon Transmission Provider Event of Default**

- (a) General – Upon the occurrence of an Transmission Provider Default and at any time thereafter, provided Network Customer is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
  - (i) Network Customer shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
  - (ii) The rights, remedies and recourse available to Network Customer 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 **Article 8**, Transmission Provider shall not be responsible for any claim, action, loss, injury, damage or proceeding whatsoever as a result of any interruptions, diversions, curtailments, or other procedures necessary to maintain the Reliable operation of the NL Control Area. This would include all Transmission Service as provided under this Agreement, except if such claim, action, proceeding or loss is due to the Transmission Provider's gross negligence or willful misconduct.
- (c) Equitable Relief – Nothing in this Article will limit or prevent Network Customer from seeking equitable relief including specific performance or a declaration to enforce Transmission Provider's obligations under this Agreement.

## **6.3 Network Customer Events of Default**

Except to the extent excused as a result of an event of Force Majeure, the occurrence of one or more of the following events shall constitute a default by Network Customer under this Agreement (a "**Network Customer Default**"):

- (a) Network Customer 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 ten (10) calendar days after the receipt of a demand from Transmission Provider that such amount is due and owing;
- (b) Network Customer is in default or in breach of any term, condition or obligation under this Agreement, and, if the default or breach is capable of being cured, it continues for thirty (30) calendar days after the receipt by Network Customer of Notice thereof from Transmission Provider, unless the cure reasonably requires a longer period and Network Customer is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Transmission Provider;
- (c) Any representation or warranty made by Network Customer in this Agreement is false or misleading in any material respect;
- (d) Network Customer 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) An Insolvency Event.

#### **6.4 Transmission Provider Remedies upon Network Customer Event of Default**

- (a) General - Upon the occurrence of a Network Customer Default and at any time thereafter, provided Transmission Provider is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated as being the sole and exclusive right, remedy or recourse:
  - (i) Transmission Provider shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
  - (ii) The rights, remedies and recourse available to Transmission Provider 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 **Article 8**, Transmission Provider may recover all Losses suffered by Transmission Provider that are due to a Network Customer 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 Transmission Provider to recover any amounts owed to Transmission Provider by Network Customer under this Agreement.

- (c) Equitable Relief – Nothing in this Article will limit or prevent Transmission Provider from seeking equitable relief including specific performance or a declaration to enforce Network Customer’s obligations under this Agreement.

**6.5 Insolvency Event**

- (a) The Parties agree that, should an Insolvency Event occur at such time where the Parties are departments, branches or divisions within the same corporate Entity or otherwise jointly controlled so as to establish an inter-company relationship, the Insolvency Event shall not be deemed an Event of Default under this Agreement.
- (b) In the event that an Insolvency Event occurs with respect to a Party and the Parties are not departments, branches or divisions within the same corporate Entity or otherwise jointly controlled so as to establish an inter-company relationship, the provisions of **Sections 6.1 through 6.4** shall apply for purposes of the declaration of an Event of Default and any remedies associated with such Insolvency Event.

**ARTICLE 7  
LIABILITY AND INDEMNITY**

**7.1 Network Customer Indemnity**

Network Customer shall indemnify, defend, reimburse, release and save harmless Transmission Provider and its Affiliates, each Transmission Owner and the respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of both the Transmission Provider and each Transmission Owner, (collectively, the "**Transmission Provider 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 Transmission Provider 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 the gross negligence or wilful misconduct of Network Customer or its Affiliates and the respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them (collectively, the "**Network Customer Group**") occurring in connection with, incidental to or resulting from Network Customer’s obligations under this Agreement.

## 7.2 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 who caused the Loss or from insurance, each Party shall be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements on any site of the NL Transmission System, (including, with respect to any member of the Network Customer Group, such property of such member of the Network Customer Group, and, with respect to any member of the Transmission Provider Group, such property of such member of the Transmission Provider Group), howsoever incurred.

## 7.3 Indemnification Procedure

- (a) Generally –Network Customer ("**Indemnitor**") shall indemnify and hold harmless Transmission Provider and the other Entities as set forth in **Section 7.1**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 7.3**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly Notify the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so Notify promptly.
- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 7.3** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (d) 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 thirty (30) calendar days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable Third Party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the



time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 7.3(h)**.

- (e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall 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 shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation of 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 (7) calendar days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.
- (f) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable Third Party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.
- (g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.

- (h) 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 shall 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 7.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

#### **7.4 Insurer Approval**

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

### **ARTICLE 8 LIMITATION OF DAMAGES**

#### **8.1 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 7** and **Article 8** of this Agreement shall apply to any and all Claims.

#### **8.2 No Consequential Loss**

Notwithstanding any other provision of this Agreement, in no event shall Network Customer or any other member of the Network Customer Group be liable to Transmission Provider or any other member of the Transmission Provider Group, nor shall Transmission Provider or any member of the Transmission Provider Group be liable to Network Customer or any member of the Network Customer Group, for decline in market capitalization, increased cost of capital or borrowing, or for any other 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 member of the Network Customer Group or the Transmission Provider Group, as the case may be, with respect to matters relating to this Agreement, in favour of a Third Party shall be deemed to be direct, actual damages, as between the Parties, for the purpose of this **Section 8.2**. For the purposes of this **Section 8.2**, lost revenues or profits shall not be considered to be consequential, incidental or indirect damages.

### **8.3 Liquidated Damages**

To the extent that any damages required to be paid under this Agreement are expressly stated to be liquidated damages, the Parties have computed, estimated and agreed upon the amount of such damages as a reasonable forecast of anticipated or actual Losses in view of the difficulty in calculating or determining the consequences of the harm or the amount of the Losses. The Parties agree that such liquidated damages are a genuine pre-estimate of damages, are not a penalty, and are intended to protect both Parties from uncertainties. The obligation of a Party to pay, and the other Party to accept such amount, as applicable, shall be legally enforceable and binding upon the Parties.

### **8.4 Insurance Proceeds**

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to (i) any insurance proceeds received or entitled to be received in relation to the Claim, and (ii) 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 9 REPRESENTATIONS AND WARRANTIES**

### **9.1 Network Customer Representations and Warranties**

Network Customer represents and warrants to Transmission Provider that, as of the date hereof:

- (a) It is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Network Customer 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 Entity is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (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.

**9.2 Transmission Provider Representations and Warranties**

Transmission Provider represents and warrants to Network Customer that, as of the date hereof:

- (a) It is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Transmission Provider 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 Entity is required to be made or obtained by such Party for such Party's lawful

execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (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 10 CONFIDENTIALITY**

### **10.1 Protection of Commercially Sensitive Transmission Service Data**

The Transmission Provider will treat information provided by the Network Customer pursuant to this Agreement as confidential, at the request of the Network Customer, except to the extent that disclosure of such information is required pursuant to Applicable Law, for the maintenance of the Reliability of the NL Control Area consistent with Good Utility Practice, or pursuant to NL Transmission Policies and Procedures.

## **ARTICLE 11 ASSIGNMENT AND CHANGE OF CONTROL**

### **11.1 Network Customer Assignment Rights**

- (a) General – In the event of a merger, consolidation, reorganization, sale or foreclosure of Network Customer, and upon prior written consent of Transmission Provider, which shall not be unreasonably withheld, Network Customer may assign this Agreement to the Entity assuming and succeeding to the responsibility for the delivery of energy and capacity to Network Customer's designated Network Load. Any assignment of this Agreement under this **Article 11** shall be conditioned upon execution of an Assignment Agreement substantially in the form attached here to as **Appendix C**.
- (b) Agreement to be Bound – An assignment of this Agreement pursuant to **Section 11.1(a)** shall be effective no earlier than the execution of a binding written agreement of all Entities party to the assignment confirming that such Entity shall, from and after the date of the assignment, be bound by the provisions of this Agreement.
- (c) Change of Control - A change in the Network Customer's direct or indirect shareholders of, or shareholdings, shall not be deemed to be an assignment requiring the prior written consent of Transmission Provider pursuant to **Section 11.1(a)**.

- (d) Non-Permitted Assignment - Any assignment of this Agreement by the Network Customer, in whole or in part, in contravention of this **Section 11.1** will be null and void.

## **11.2 Transmission Provider Assignment Rights**

- (a) General - Transmission Provider shall be entitled to assign this Agreement, all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Transmission Provider Rights**") without the prior written consent of Network Customer.
- (b) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Transmission Provider Affiliate Assignee that would result in such Transmission Provider Affiliate Assignee no longer being an Affiliate of Transmission Provider will be deemed to be an assignment of Transmission Provider Rights.

## **ARTICLE 12 DISPUTE RESOLUTION**

### **12.1 General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Claims and Disputes pursuant to the dispute resolution procedure set forth in this **Article 12** and, as applicable, **Appendix B** (the "**Commercial Arbitration Code**").
- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any dispute resolution proceedings regarding a Claim or Dispute pursuant to this **Article 12**, without prejudice to either Party's rights pursuant to this Agreement.

### **12.2 Procedure for Claims**

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the "**Claiming Party**") intending to assert a Claim against the other Party (the "**Recipient Party**") shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party's failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.
- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have twenty (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 twenty (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 **Sections 12.3 through 12.5** and **Schedule 3**, as applicable.

### **12.3 Procedures for Disputes**

In the event of a Dispute, the following procedures shall apply:

- (a) Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party intending to initiate a Dispute (the "**Initiating Party**") against the other Party (the "**Recipient Party**") shall give the Recipient Party prompt Notice of the Dispute, which shall describe the Dispute in reasonable detail, including any estimated amount, if practicable, of the Losses that have been or may be sustained by the Initiating Party. The Initiating Party's failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.
- (b) The Parties shall first attempt to resolve such Dispute through negotiation between senior officers of each Party, failing which the Parties may agree to initiate:
  - (i) Non-binding mediation procedures pursuant to **Section 12.4**; or
  - (ii) Binding arbitration procedures, if agreed to by all Parties, pursuant to **Section 12.5** unless **Section 12.7** applies;
- (c) In the event that the Parties are unable to resolve the Dispute pursuant to the procedures specified in **Section 12.3(a)**, the Dispute shall be subject to litigation unless **Section 12.7** applies.
- (d) In the event of a Dispute concerning an amount payable under this Agreement, the payor shall ensure that such amount is paid in full, prior to initiating any Dispute resolution procedures relating thereto, subject only to the right of the payor to be reimbursed by the payee with interest calculated at the Canadian Prime Rate if and as the Dispute resolution procedures may require.
- (e) Subject to the Indemnification provisions within this Agreement, all Parties reserve the right to pursue such remedies and rights available at law or equity that they are entitled to pursue under the laws of NL.

## 12.4 Mediation

- (a) Initiation of Mediation - Subject to an election to proceed by arbitration pursuant to **Section 12.3(b)(ii)**, if the Parties are unable to resolve a Dispute by negotiation pursuant to **Section 12.3(b)**, the Parties may mutually agree to initiate non-binding mediation of such matter. The Parties shall confer and agree upon the selection of a mediator. Such 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.
- (b) Initial Mediation Period - Upon election of non-binding mediation, the Parties shall agree to participate in such mediation for a period of no less than sixty (60) Business Days. Upon completion of such initial mediation period, each Party may terminate any further mediation by providing written Notice of such termination to the other Party and the mediator.
- (c) Mediation Process - The Parties shall participate in good faith and in a timely and responsive manner in the mediation process.
  - (i) The mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.
  - (ii) The location of the mediation shall be St. John's, NL, unless otherwise agreed to by the Parties, and the language of the mediation will be English.
  - (iii) The Parties shall provide such assistance and produce such information as may be reasonably requested by the mediator, and shall meet together with the mediator, or as otherwise determined by the mediator, in order to resolve the Dispute.
- (d) Cost Responsibility - 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.
- (e) 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 all of the Parties.

## 12.5 Binding Arbitration

- (a) Submission to Binding Arbitration - If the Parties are unable to resolve a Dispute pursuant to **Section 12.4**, or, if no mediation was initiated, following failure of negotiations as provided in **Section 12.3(b)**, the Parties may agree, in writing, to



submit the Dispute to binding arbitration under this **Section 12.5**. The date upon which the Parties agree, in writing, to submit the Dispute to binding arbitration shall be the "Arbitration Initiation Date".

(b) Appointment of Tribunal

- (i) The Parties may mutually agree to have the arbitration heard and determined by one arbitrator, in which case the Parties agree to jointly appoint a single arbitrator within fifteen (15) Business Days after the Arbitration Initiation Date.
- (ii) With the exception of an arbitration pursuant to **Section 12.5(b)(i)**, the arbitration will be heard and determined by three arbitrators, and, in such event:
  - (A) Each Party shall appoint an arbitrator of its choice within twenty (20) Business Days of the Arbitration Initiation Date. The third arbitrator shall be selected in accordance with **Section 12.5(b)(i)**;
  - (B) The Party-appointed arbitrators shall in turn appoint a third arbitrator, who shall act as chair of the Tribunal, within twenty (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 twenty (20) Business Days after the Arbitration Initiation Date, the appointment of the chair of the Tribunal and the third arbitrator will be made in accordance with Article 11 of the Commercial Arbitration Code set forth in **Appendix B**.
- (iii) Except for the appointment of an arbitrator pursuant to the Article 11 of the Commercial Arbitration Code set forth in **Appendix B**, the appointment of an arbitrator must be in writing and accepted in writing by the arbitrator.

(c) Procedure

- (i) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, NL.
- (ii) The arbitration shall be conducted in the English language and the arbitrators must be fluent in the English language.
- (iii) If the Parties initiate multiple arbitration proceedings under the Agreement, 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 the Parties, be consolidated into a single arbitration proceeding.

- (iv) 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 twenty (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 Commercial Arbitration Code set forth in **Appendix B**. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.
  - (v) Nothing in this **Section 12.5** will prevent a 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 Commercial Arbitration Code set forth in **Appendix B**, or to prevent manifestly unfair or unequal treatment of any Party.
  - (vi) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Agreement or of the Commercial Arbitration Code set forth in **Appendix B**.
- (d) Awards
- (i) The arbitration award shall be given in writing, will be final and binding on the Parties and will not be subject to any appeal.
  - (ii) 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.
  - (iii) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.
  - (iv) 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.
  - (v) The amount of the arbitration award including costs will bear interest at the Canadian Prime Rate plus three percent 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.
- (e) Final Resolution - If the Parties agree to initiate arbitration pursuant to **Section 12.3(b)(ii) or 12.5(a)**, the Parties agree that the arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of

a Dispute; provided that a Party may initiate such court proceedings as described in **Section 12.5(c)(v)**.

- (f) **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 a an award made on consent of the Parties.

**12.6**            **Directions Under Dispute Resolution Procedure**

The Parties agree that the Mediator, Arbitrator, Independent Expert or Tribunal, as applicable, pursuant to a Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in its decision a methodology and timelines to provide for an expedited and systematic approach to future Disputes of a similar nature.

**12.7**            **Rights Before the PUB**

Nothing in this **Article 12** shall restrict the rights of any party to file a complaint with the PUB on matters which arise under the jurisdiction of the PUB.

**ARTICLE 13**  
**MISCELLANEOUS PROVISIONS**

**13.1**            **Notices**

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

To Transmission Provider:

Newfoundland and Labrador System Operator  
Attn: Manager, Reliability Standards and Commercial Compliance  
500 Columbus Drive  
P.O. Box 12400, Station A  
St. John's NL A1B 4K7  
Fax: 709-737-1318  
Email: [transmission@nlh.nl.ca](mailto:transmission@nlh.nl.ca)

To Network Customer:

[    ]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by facsimile transmission and confirmed by a copy immediately sent by courier, shall be deemed to have been given or made on the day it was successfully

transmitted by facsimile as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Either Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Party.

### **13.2 Entire Agreement**

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

### **13.3 Counterparts**

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

### **13.4 Expenses of Parties**

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

### **13.5 Announcements**

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

### **13.6 Relationship of the Parties**

The Parties hereby disclaim any intention to create by this Agreement any partnership, 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 subject matter of this Agreement shall be construed or considered as creating any such partnership, 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.

**13.7**            **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.

**13.8**            **Severability**

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

**13.9**            **Time of the Essence**

Time shall be of the essence.

**13.10**          **Amendments**

No amendment or modification to this Agreement shall be effective unless (a) it is in writing and signed by both Parties, or (b) such amendment is ordered by an Authorized Authority or is necessary to comply with Authorized Authority. In the event of an amendment ordered by an Authorized Authority, such amendment will be deemed in force as of the date of the order, or such other date as specified within the order.

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

**13.12**          **No Third Party Beneficiaries**

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Entity not a party to this Agreement, and no Entity other than the

Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

**13.13 Waiver of Sovereign Immunity**

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

**13.14 Successors and Assigns**

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

**13.15 Crown not an Affiliate**

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

**13.16 Effect of Termination and Survival**

- (a) Obligations on Termination - 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 that 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, which shall continue to be held in accordance with the provisions of **Section 10.1**); and
  - (ii) Neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 13.16**.
- (b) 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. Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:

- (i) The final settlement of all accounts between the Parties;
- (ii) The readjustment of any accounts as a result of the settlement of insurance claims or Third Party claims after the date of termination;
- (iii) Any 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, which shall continue to bind the Parties;
- (iv) Any and all liabilities, rights and obligations of the Parties which have accrued prior to termination; and
- (v) Any other obligations that survive pursuant to the terms of this Agreement.

[Remainder of this page intentionally left blank.]

**IN WITNESS WHEREOF**, the Parties have caused this Transmission Service Agreement to be executed by their respective officials.

**NL System Operator**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the NL System Operator.

**[Transmission Customer]**

By: \_\_\_\_\_

Name:

Title:

I have authority to bind the [Transmission Customer]



## **SCHEDULE 1**

### **CALCULATION OF TRANSMISSION LOSSES**

**SCHEDULE 1**  
**CALCULATION OF TRANSMISSION LOSSES**

**1.0 Calculating Monthly Transmission Losses**

In order to determine the amount of Energy to be delivered by Transmission Provider to the Point of Delivery, a transmission loss factor will be applied, in accordance with **Section 2.0** of this **Schedule 1**, to Network Customer's hourly Energy that is Scheduled to be provided at the Point of Receipt. The transmission loss factor to be applied will be determined each month as described in this schedule (the "**Transmission Loss Factor**").

**2.0 Application of the Loss Factor**

The Transmission Losses for Network Integration Transmission Service pursuant to this Agreement applicable to each Network Customer's Energy that is Scheduled to be transferred from the Point of Receipt to the Point of Delivery will be calculated as follows:

*Capacity available at the Point of Delivery = Capacity reserved at the Point of Receipt x (1-LSF) measured in MW*

*Where: LSF = Transmission Loss Factor.*

**3.0 Transmission Loss Factor Calculation**

The Transmission Loss Factor to be applied in each month shall be the ratio of the total Transmission Losses on the NL Transmission System during the Reference Period to the total energy received into the NL Transmission System at all Points of Receipt during the Reference Period. The total Transmission Losses on the NL Transmission System shall be measured by the difference between the sum of metered Energy received at all Points of Receipt and the sum of metered Energy delivered to all Points of Delivery. Except with the initial year after commercial operation of the NL Transmission System as set forth in **Section 3.0(b)** of this **Schedule 1**, the Reference Period shall be the 12-month period ending immediately prior to the calendar month preceding the given month.

The Transmission Loss Factor to be applied to Network Customers' Energy that is Scheduled at the Point of Receipt in each hour of the month will, subject to paragraph (b), be calculated as the difference between the sum of all actual metered Energy received at the meters at the Points of Receipt less the sum of the actual metered Energy delivered to all the Point of Delivery during the Reference Period, as follows:

- (a) The Transmission Loss Factor shall be the ratio of the NL Transmission System Transmission Losses during the Reference Period to the Energy metered on the NL Transmission System at the Point of Receipt during the Reference Period; and

- (b) During the first thirteen (13) months of delivery of the Energy after commercial operation of the NL Transmission System, the Transmission Loss Factor shall be based upon the methodology described in (a), provided that instead of using actual Energy amounts in the performance of the relevant calculations, the calculations will use forecasts of Energy quantities associated with all transmission service agreements in respect of the NL Transmission System.

#### **4.0 Losses Determination**

The NL Transmission System Transmission Losses are all metered Energy Losses, being the difference between all metered Energy received at the Point of Receipt and all metered Energy delivered to the Point of Delivery.

#### **5.0 Metering**

There shall be metering at each of the following locations so as to accurately determine the Transmission Losses:

1. Points of Receipt; and
2. Points of Delivery.

The NLSO will assign each Point of Delivery and Point of Receipt within the NL Transmission System a unique identifier, meter location and meter number, where applicable. There will be appropriate adjustments made for Points of Delivery that are not directly metered. The meters will be read at least monthly.

## **SCHEDULE 2**

### **RATES FOR NETWORK INTEGRATION TRANSMISSION SERVICE**

**SCHEDULE 2**  
**NETWORK INTEGRATION TRANSMISSION SERVICE RATES AND CHARGES**

The rates and charges for Network Integration Transmission Service shall be posted by Transmission Provider on the NLSO OASIS and otherwise provided to Network Customer, and shall be effective as of the Effective Date of this Agreement, as it may be modified from time to time. Such rates may be updated or modified pursuant to Applicable Laws and the NL Transmission Policies and Procedures.

**1.0 Network Integration Transmission Service Rate:** Network Customer shall compensate the Transmission Provider for Network Integration Transmission Service as follows:

- (a) Monthly Demand Charge: Network Customer shall pay a monthly Demand Charge, which shall be determined by multiplying its Load Ratio Share times one twelfth (1/12) of the Transmission Provider's Annual Transmission Revenue Requirement. The Load Ratio Share is the ratio of a Network Customer's Network Load to the Transmission Provider's total system Load computed in accordance with Sections 1.0 (b) and 1.0 (c).
- (b) Determination of Network Customer's Monthly Network Load: Network Customer's monthly Network Load is its hourly Load (including its designated Network Load not physically interconnected with the Transmission Provider) coincident with the Transmission Provider's Monthly Transmission System Peak for the NL Control Area.
- (c) Determination of the Transmission Provider's Monthly Transmission System Load: The monthly Transmission System Load for the NL Control Area is the Transmission Provider's Monthly Transmission System Peak minus the coincident peak usage of all Firm Point-To-Point Transmission Service customers plus the Reserved Capacity of all Firm Point-To-Point Transmission customers.

**2.0 Scheduling, System Control and Dispatch Service**

Network Customer shall compensate Transmission Provider for the provision of Scheduling, System Control and Dispatch Service at the rate posted on the NLSO OASIS and shall be charged on a basis of *MW-month multiplied by* Network Customer's Monthly Load Ratio Share.

**3.0 Transmission Funding Credit**

With respect to the monthly charges owed by Transmission Customer to Transmission Provider for Network Integration Transmission Service pursuant to **Section 3.3(b)** of this Agreement, Transmission Customer shall be given a Transmission Funding Credit for payments documented to have been paid by Transmission Customer, pursuant to other agreements or legal obligations, for any capital or operating costs of a transmission facility which is designated as part of the NL Transmission System and such capital or operating costs are otherwise reflected in the applicable rates for Network Integration Transmission Service. For purposes of this Transmission Funding Credit, the capital or operating costs shall include depreciation, return on investment, operating

and maintenance costs, administrative and general costs, and taxes, that are documented to be payment obligations by Transmission Customer for transmission facilities designated as part of the NL Transmission System. Transmission Customer shall provide to Transmission Provider documentation of its obligation to pay and payments made for capital or operating costs of a transmission facility which is designated as part of the NL Transmission System. Upon receipt and confirmation of Transmission Customer's payments, Transmission Provider shall apply such paid amounts to the amounts owed for monthly charges for Network Integration Transmission Service or Ancillary Services, as applicable pursuant to **Sections 3.3(b) and 3.3(c)** of this Agreement. For the avoidance of doubt, the Transmission Funding Credit shall not apply to: (i) charges for Non-Firm Point-to-Point Transmission Service; or (ii) charges for Scheduling, System Control and Dispatch Service.

#### **4.0 Development of Annual Rates**

The development of rates for Transmission Service in an applicable Rate Year shall occur as follows:

- a. The charges for Network Integration Transmission Service pursuant to this Agreement shall be calculated using the methodology and data inputs from the annual informational filing by Transmission Provider with the PUB. The methodology and form of data inputs shall be posted on the NLSO OASIS.
- b. Transmission Provider's calculation of all applicable rates shall be undertaken using Transmission Provider's accounting policies, practices and procedures which are consistent with: (i) GAAP; and (ii) applicable rules of practice and procedure adopted by the PUB with respect to accounting records covering capital investment, balance sheets, revenues, levels of transmission services and Loads, operating expenses and statements of income (hereinafter the "**Fundamental Predicates**"). Changes to the Fundamental Predicates may necessitate pro forma adjustments to the methodology or changes to the input data, which shall be adopted on a prospective basis only after such changes are approved by the PUB and Notice is provided to all Transmission Customers.
- c. Pursuant to the process and deadlines established in the NL Transmission Policies and Procedures, Transmission Provider shall post on the NLSO OASIS and otherwise make available to all Transmission Customers the rates for Transmission Services for each upcoming Rate Year, as calculated using the methodology and projected costs, Loads, and other inputs as budgeted for the Rate Year. Transmission Provider shall make available to all transmission customers all work papers and underlying data, information, and documents, and shall provide Notice of any material changes in the Transmission Provider's accounting policies, practices and procedures.
- d. In accordance with the schedule for public posting, review and comments set forth in the NL Transmission Policies and Procedures, any interested party shall communicate to Transmission Provider (with reasonable specificity) any questions or concerns related to data inputs and calculation of the applicable rates for transmission services ("**Informal Review Period**").

**SCHEDULE 3**

**ANCILLARY SERVICES**

### **SCHEDULE 3 ANCILLARY SERVICES**

The rates and charges for Ancillary Services shall be posted by Transmission Provider on the NLSO OASIS and otherwise provided to Network Customer, and shall be effective as of the Effective Date of this Agreement, as it may be modified from time to time. Such rates may be updated or modified pursuant to Applicable Laws and the NL Transmission Policies and Procedures.

#### **1.0 Scheduling, System Control and Dispatch Service**

The rate for Scheduling, System Control and Dispatch Service is posted on the NLSO OASIS and shall be charged on a basis of MW-month multiplied by Network Customer's Monthly Load Ratio Share.

#### **2.0 Reactive Supply and Voltage Control**

The rates for Reactive Supply and Voltage Control from Generation or Other Sources Service are posted on the NLSO OASIS and shall be charged on a basis of MW-month multiplied by Network Customer's Load Ratio Share.

#### **3.0 Regulation and Frequency Response Service**

The rates for Regulation and Frequency Response Service are posted on the NLSO OASIS and shall be charged on the basis of Network Customer's Monthly Peak Network Load. The billing determinants for this purchase will be reduced by any portion of this service that Network Customer obtains from Third Parties or by self-supply; provided, however, that Network Customer shall be responsible for installing any telemetering or other equipment necessary for multiple parties to provide Regulation and Frequency Response Service in a manner that is consistent with Good Utility Practice.

#### **4.0 Energy Imbalance Service**

The rates for Energy Imbalance Service shall be posted on the NLSO OASIS. Transmission Provider shall establish charges for energy imbalance based on the deviation bands as follows:

- (i) Deviations within +/- 1.5 percent (with a minimum of 2 MW) of the Scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Network Customer's Scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of incremental or decremental cost;
- (ii) Deviations greater than +/- 1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the Scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Network Customer's Scheduled transaction(s)



will be settled financially, at the end of each month, at 110 percent of incremental cost or 90 percent of decremental cost, and

- (iii) Deviations greater than +/- 7.5 percent (or 10 MW) of the Scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of Network Customer's Scheduled transaction(s) will be settled financially, at the end of each month, at 125 percent of incremental cost or 75 percent of decremental cost.

For purposes of charges for imbalance services, incremental cost and decremental cost represent the actual variable dispatch cost used by the Transmission Provider in the dispatch of resources within the NL Control Area to serve system obligations and unit commitment costs incurred as a result of the provision of service under this Schedule.

#### **5.0 Operating Reserve - Spinning Reserve Service**

The rates for Operating Reserve - Spinning Reserve Service are posted on the NLSO OASIS and shall be charged on the basis of Network Customer's Monthly Peak Load. The billing determinants for this purchase will be reduced by any portion of this service that Network Customer obtains from Third Parties or by self-supply.

#### **6.0 Operating Reserve - Supplemental Reserve Service**

The rates for Operating Reserve - Supplemental Reserve Service are posted on the NLSO OASIS and shall be charged on the basis of Network Customer's Monthly Peak Load. The billing determinants for this purchase will be reduced by any portion of this service that Network Customer obtains from Third Parties or by self-supply.

## **APPENDIX A**

### **NEWFOUNDLAND AND LABRADOR TRANSMISSION FACILITIES**

**APPENDIX A  
NL TRANSMISSION SYSTEM**

**[Single-Line Diagram depicting all transmission facilities within the Province with identification of Island Interconnected System; Labrador Island Link; Labrador Transmission Assets; NL Transmission System; NL Control Area]**

**APPENDIX B**

**COMMERCIAL ARBITRATION CODE**

**APPENDIX B  
COMMERCIAL ARBITRATION CODE**

[NTD: Available at <http://laws-lois.justice.gc.ca/eng/acts/C-34.6/page-3.html>. Hard copy to be inserted in final Agreement.]

In the application of the Arbitration Act and the Commercial Arbitration Code, the following terms shall apply:

- (i) The Tribunal will not have the power provided for in Section 10(b) of the Arbitration Act.
- (ii) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under **Section 12.5** shall be given and deemed received in accordance with **Section 13.1**.
- (iii) For the purposes of Article 7 of the Code, this Appendix constitutes the “arbitration agreement.”
- (iv) 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.
- (v) The rules of law applicable to a Dispute arbitrated under Schedule will be the laws of NL.
- (vi) 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.
- (vii) For the purposes of Section 3 of the Arbitration Act, once the Tribunal (or a single arbitrator pursuant to **Section 12.5(b)(i)**) has been appointed, the submission to arbitration will be deemed to be irrevocable.
- (viii) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have each agreed, or have been deemed to have agreed, to binding arbitration under this Schedule.
- (ix) Where there is a conflict between this Schedule and the Code, this Schedule will prevail.

**APPENDIX C**

**FORM OF ASSIGNMENT AGREEMENT(S)**

**APPENDIX C  
FORM OF ASSIGNMENT AGREEMENT(S)**

**ASSIGNMENT OF [NAME OF] AGREEMENT**

**[For purposes of an Assignment Pursuant to Article 11]**

**THIS ASSIGNMENT AGREEMENT** is made effective the ● day of ●, 20\_\_ (“**Effective Date**”)  
**AMONG:**

[Parties]

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

**ARTICLE 1  
INTERPRETATION**

**1.1**            **Definitions**

In this Agreement, including the recitals:

“**Affiliate**” means, with respect to a corporation, partnership or other Entity, each such other corporation, partnership or other Entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such corporation, partnership or other Entity;

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

“**Applicable Law**” means 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;

“**Assigned TSA**” has the meaning set forth in the recitals;

“**Assignee**” means \_\_\_\_\_;

“**Assignor**” means \_\_\_\_\_;

“**Authorized Authority**” means 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 Entity, 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;

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

**“Consenting Party”** means \_\_\_\_\_;

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

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

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

**“Entity”** 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;

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

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

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

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

- (a) An order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) Such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act*



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

- (c) A court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent Entity, 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 thirty (30) calendar 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 thirty (30) calendar 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 thirty (30) calendar days of the commencement of such proceeding or application; or
- (e) Such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

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

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

**“NL Crown”** means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

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

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

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

**“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, license, approval or other authorization;

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

**“Term Sheet”** has the meaning set forth in the preamble to this Assignment Agreement;

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

**“Voting Shares”** means shares issued by a corporation in its capital stock, or equivalent interests in any other Entity, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Entities performing similar

functions) of such Entity, even if such right to vote has been suspended by the happening of such contingency.

## 1.2 Construction of Assignment Agreement

- (a) Interpretation Not Affected by Headings, etc - The division of this Assignment Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Assignment Agreement. Unless otherwise indicated, all references to an “**Article**” or “**Section**” followed by a number and/or a letter refer to the specified article or section of this Assignment Agreement. The terms “**this Assignment Agreement,**” “**hereof,**” “**herein,**” “**hereby,**” “**hereunder**” and similar expressions refer to this Assignment Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “**including,**” when used in this Assignment Agreement, means “**including without limitation.**”
- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Assignment 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 Assignment Agreement, shall have such generally accepted meanings when used in this Assignment Agreement, unless otherwise specified elsewhere in this Assignment Agreement.
- (e) Statutory References - Any reference in this Assignment Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Assignment Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated

excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Assignment Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Assignment Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Assignment Agreement.

### **1.3 Applicable Law and Submission to Jurisdiction**

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

## **ARTICLE 2 ASSIGNMENT**

### **2.1 Assignment to Affiliate**

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

### **2.2 Assumption of Liabilities**

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

### **2.3 Limitations on Assignment / Assumption**

The Assignor reserves to itself and does not assign to the Assignee, and the Assignee

does not assume from the Assignor the following rights and/or obligations:

- (a) ....
- (b) ....

#### **2.4 Confirmation of Status of Assigned Agreement**

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Party is in default of any of its obligations under the Assigned TSA. The Consenting Party hereby confirms to the Assignee that neither it nor, to its Knowledge, the Assignor is in default of any of its obligations under the Assigned TSA.

#### **2.5 Assignor to Remain Liable**

Notwithstanding the foregoing, [Assignor] expressly acknowledges and agrees that it shall remain liable to the Consenting Party as a primary obligor under the Assigned TSA to observe and perform all of the conditions and obligations in the Assigned TSA which the Assignor, and as of the Effective Date the Assignee, are bound to observe and perform.

#### **2.6 Assignee Defaults**

The Assignee shall be in default of the Assigned TSA if at any time:

- (a) Assignee ceases to carry on all or substantially all of its business or, except as permitted under the Assigned TSA, transfers all or substantially all of its undertaking and assets; or
- (b) An Insolvency Event occurs with respect to Assignee.

#### **2.7 Acknowledgement of Consenting Party**

The Consenting Party acknowledges, consents to and accepts the within assignment and assumption of the Assigned TSA, subject to the terms and conditions herein and confirms to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned TSA.

#### **2.8 Supplies and Payments Exclusive of Taxes**

- (a) Payment of Taxes – Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:

- (i) All amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and
- (ii) If one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to Section 2.10.

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

- (a) Subject to the right of final determination as provided under **Section 2.9(b)** of this Assignment Agreement, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to the Assigned TSA for non-cash consideration.
- (b) If a Party supplying a property or service under the Assigned TSA for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under the Assigned TSA for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

**2.10 Invoicing**

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

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

**2.11**            **Payment and Offset**

- (a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to the Assigned TSA will be payable in immediately available funds within twenty (20) calendar days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to another Party under the Assigned TSA against Taxes or other amounts receivable from such other Party under other legal obligations between the Parties, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

**2.12**            **HST Registration Status**

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

**2.13**            **[●]**

[Insert any provision required by the Assigned TSA to be included.]

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES**

**3.1**            **Assignor and Assignee Representations and Warranties**

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

- (a) It is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Assignment Agreement and the Assigned TSA;
- (b) The execution, delivery and performance of this Assignment Agreement and under the Assigned TSA are within its powers, have been duly authorized by all necessary [corporate] action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) This Assignment 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 or set out Legal Proceedings, if any.] pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Assignment Agreement or the Assigned TSA;
- (f) No consent or other approval, order, authorization or action by, or filing with, any Entity is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Assignment Agreement or the Assigned TSA, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, and/or (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Assignment Agreement and the Assigned TSA;
- (g) It is not a non-resident of Canada for the purposes of the Income Tax Act; and
- (h) The Assignee is an Affiliate of the Assignor.

**ARTICLE 4  
DISPUTE RESOLUTION PROCEDURE**

**4.1           General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in the Assigned TSA.
- (b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full.

**ARTICLE 5  
MISCELLANEOUS PROVISIONS**

**5.1           Notices**

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

To Assignor:

[•]

To Assignee:



[•]

To Consenting Party:

[•]

[To NLH:]

[•]

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

## **5.2 Prior Agreements**

This Assignment 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 Assignment Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Assignment Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other agreements.

## **5.3 Counterparts**

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

## **5.4 Expenses of Parties**

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

## **5.5 Announcements**

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

## **5.6 Relationship of the Parties**

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

## **5.7 Further Assurances**

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

## **5.8 Severability**

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

## **5.9 Time of the Essence**

Time shall be of the essence.

## **5.10 Amendments**

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

**5.11 No Waiver**

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

**5.12 No Third Party Beneficiaries**

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

**5.13 Survival**

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

**5.14 Waiver of Sovereign Immunity**

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

**5.15 Successors and Assigns**

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

[Remainder of this page intentionally left blank.]

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

**Assignor**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the  
[company]/[corporation]

**Assignee**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the  
[company]/[corporation]

**Consenting Party**

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

I/We have authority to bind the  
[company]/[corporation]