

**NEWFOUNDLAND AND LABRADOR
BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**

AN ORDER OF THE BOARD

NO. P.U. 4(2021)

1 **IN THE MATTER OF** the *Electrical Power*
2 *Control Act, 1994*, SNL 1994, Chapter E-5.1 (the
3 “*EPCA*”) and the *Public Utilities Act*, RSNL 1990,
4 Chapter P-47 (the “*Act*”), as amended, and regulations
5 thereunder; and
6

7 **IN THE MATTER OF** an application by
8 Newfoundland and Labrador Hydro for approval
9 of a revised Power Service Agreement, a Firm Energy
10 Power Purchase Agreement, and a Second Amended
11 and Restated Capacity Assistance Agreement between
12 Hydro and Corner Brook Pulp and Paper Limited, pursuant
13 to sections 70, 71 and 80 of the *Act*.
14
15

16 **WHEREAS** Newfoundland and Labrador Hydro (“Hydro”) is a corporation continued and
17 existing under the Hydro Corporation Act, 2007, is a public utility within the meaning of the *Act*,
18 and is also subject to the provisions of the *EPCA*; and
19

20 **WHEREAS** in Order No. P.U. 26(2018) the Board approved the most recent Power Service
21 Agreement whereby Hydro sells electrical power and energy to Corner Brook Pulp and Paper
22 Limited (“CBPP”); and
23

24 **WHEREAS** in Order No. P.U. 40(2018) the Board approved an Amended and Restated Capacity
25 Assistance Agreement between Hydro and CBPP for up to 105 MW of capacity assistance, which
26 provides the potential for a reduction in the overall island electrical system demand during peak
27 hours and periods of system constraint for the term of the agreement which expires on the earlier
28 of April 30, 2022 or the commissioning of the Muskrat Falls Generating Plant; and
29

30 **WHEREAS** in Order No. P.U. 35(2019) the Board approved a Firm Energy Power Purchase
31 Agreement between Hydro and CBPP for capacity and energy purchases which terminated on
32 December 31, 2019; and
33

34 **WHEREAS** on December 8, 2020 Hydro filed an application for approval of a revised Power
35 Service Agreement, a Firm Energy Power Purchase Agreement, and a Second Amended and
36 Restated Capacity Assistance Agreement with CBPP (the “Application”); and
37

38 **WHEREAS** the Application stated Hydro and CBPP are in agreement on the proposed Power
39 Service Agreement which no longer contains the Generation Credit Pilot Project initially approved

1 in Order No. P.U. 17(2009) and which contains revisions to the amount of power on order, as well
2 as other wording and minor modifications; and

3
4 **WHEREAS** the Application stated the proposed Firm Energy Power Purchase Agreement would
5 allow Hydro to avail of firm energy purchases from CBPP at prices that would supplement or
6 offset purchases over the Maritime Link or generation from the Holyrood Thermal Generating
7 Station while providing cost savings for customers during the one-year term of the agreement and
8 any agreed extensions; and

9
10 **WHEREAS** the Application further stated the terms of the proposed Second Amended and
11 Restated Capacity Assistance Agreement are substantially the same as the current agreement
12 except the termination date has been extended to April 30, 2023 and the opportunity has been
13 included to reduce the capacity fee on a pro rata basis if there are purchases pursuant to the
14 proposed Firm Energy Power Purchase Agreement during the winter period; and

15
16 **WHEREAS** the Application was copied to: Newfoundland Power Inc.; the Consumer Advocate,
17 Dennis Browne, Q.C.; a group of Island Industrial customers: Corner Brook Pulp and Paper
18 Limited, NARL Refining LP (“NARL”) and Vale Newfoundland & Labrador Limited (“Vale”);
19 Teck Resources Limited; and Praxair Canada Inc.; and

20
21 **WHEREAS** the Board issued requests for information which were answered by Hydro on January
22 13, 2021; and

23
24 **WHEREAS** on January 18, 2021 CBPP endorsed the Application and adopted the evidence
25 therein; and

26
27 **WHEREAS** on January 19, 2021 NARL and Vale advised they did not have any comments on
28 the Application; and

29
30 **WHEREAS** on January 19, 2021 Hydro filed a reply requesting that the Board approve the
31 Application as submitted; and

32
33 **WHEREAS** no other comments were received by the Board; and

34
35 **WHEREAS** the Board is satisfied that the proposed Power Service Agreement, Firm Energy
36 Power Purchase Agreement and Second Amended and Restated Capacity Assistance Agreement
37 between Hydro and CBPP are reasonable in the circumstances and should be approved.

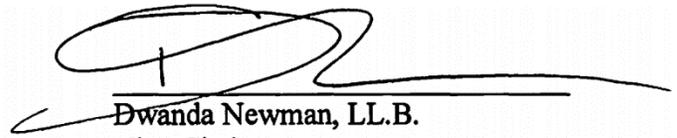
1 **IT IS THEREFORE ORDERED THAT:**

- 2
- 3 1. The Power Service Agreement as set out in Schedule A to this Order is approved.
- 4
- 5 2. The Firm Energy Power Purchase Agreement as set out in Schedule B to this Order is
- 6 approved.
- 7
- 8 3. The Second Amended and Restated Capacity Assistance Agreement as set out in Schedule C
- 9 to this Order is approved and the reporting requirements set out in Order No. P.U. 40(2018)
- 10 are continued.
- 11
- 12 4. Hydro shall pay all expenses of the Board arising from this Application.

DATED at St. John's, Newfoundland and Labrador, this 26th day of January, 2021.



Darlene Whalen, P. Eng., FEC
Chair and Chief Executive Officer



Dwanda Newman, LL.B.
Vice-Chair



Cheryl Blundon
Board Secretary

THIS SERVICE AGREEMENT made at St. John's, in the Province of Newfoundland and Labrador on the _____ day of _____ 20____.

BETWEEN: **NEWFOUNDLAND AND LABRADOR HYDRO**, a corporation and an agent of the Crown constituted by statute, renamed and continued by the *Hydro Corporation Act, 2007*, Revised Statutes of Newfoundland and Labrador, Chapter H-16, (hereinafter called "Hydro") of the first part;

AND **CORNER BROOK PULP AND PAPER LIMITED**, a company organized under the laws of Newfoundland and Labrador (hereinafter called the "Customer") of the second part.

WHEREAS Hydro has agreed to sell Electrical Demand and Energy to the Customer and the Customer has agreed to purchase the same from Hydro according to the Rates, Rules and Regulations set by the Board of Commissioners of Public Utilities for the Province of Newfoundland and Labrador and by the terms of this Agreement;

THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

ARTICLE 1
INTERPRETATION

1.01 In this Agreement, including the recitals, unless the context otherwise requires,

- (a) **"Amount of Power on Order"** means the Power contracted for in accordance with Article 2. **"Power on Order"** and **"Firm Power"** as referenced in the Rate Schedules have corresponding meanings;
- (b) **"Billing Demand"** means the components of the Customer's monthly Power consumption for which Demand charges apply as determined in accordance with Articles 6 and 11;
- (c) **"Board"** means the Board of Commissioners of Public Utilities for Newfoundland and Labrador;
- (d) **"Business Day"** means any day that is not a Saturday, Sunday or holiday upon which the main offices of Hydro or the Customer in Newfoundland and Labrador are closed;
- (e) **"Calendar Year"** means a period that commences on January 1 and ends on December 31 of that year;
- (f) **"Customer's Demand"** means the Demand at any particular time determined by adding the amount supplied to the Customer at the Delivery Points Hydro, less the amount received by Newfoundland Power at the Delivery Points Newfoundland Power;

- (g) **“Delivery Points Hydro”** means: (i) Hydro’s 66,000 volt bus in its Massey Drive Terminal Station at Corner Brook (MDR T1 & MDR B2B4-1), and (ii) the line side insulators of the Customer’s terminal structure near the east end of its Deer Lake Power Plant being the termination point of Hydro’s 66,000 volt line (DLP TL225), and (iii) the output terminals, net of station service, of the CBPP CoGen unit, or at such other location or locations that Hydro and the Customer mutually agree in writing;
- (h) **“Delivery Points Newfoundland Power”** means the 66,000 Volt terminals of the station power transformers at Marble Mountain and Pasadena, both of which are serviced from Deer Lake Power’s L1 transmission line or at such other location or locations that Hydro and the Customer mutually agree in writing;
- (i) **“Demand”** means the amount of Power averaged over each consecutive period of fifteen minutes duration, commencing on the hour and ending each fifteen minute period thereafter and measured by a demand meter of a type approved for revenue metering by the appropriate department of the Government of Canada;
- (j) **“Electricity”** includes Demand and Energy;
- (k) **“Energy”** means the amount of electricity delivered in a given period of time and measured in kilowatt hours (kWh);
- (l) **“Firm Energy”** means the Energy associated with Firm Power and is supplied during a month at the Delivery Points Hydro net of the Energy supplied at the Delivery Points Newfoundland Power less any Interruptible Energy, Generation Outage Energy and Secondary Energy;
- (m) **“Firm Power”** means, except as varied by paragraph 6.01 (a) and subject to Clause 2.06, the Demand normally associated with the Amount of Power on Order;
- (n) **“Force Majeure”** means Acts of God, fire, flood, tidal wave, lightning, earthquake, cyclone, epidemic, pandemic, acts of a competent authority, acts of public enemies, terrorism, civil commotion, war, invasion, embargo, insurrection, rebellion, sabotage, protest, riot, violence, malicious mischief, extortion, strike, labour dispute or lockout and includes any other cause which could not have been avoided by the exercise of reasonable human foresight and skill;
- (o) **“Generation Outage”** means an outage or reduction of the Customer’s generating capacity due to equipment failure, Planned Outages or natural causes beyond the control of the Customer including, but not limited to, frazil ice and low intake water, but not including an outage to those facilities dedicated to the generation of demand and energy for sale to Hydro or to a third party;
- (p) **“Generation Outage Demand”** means the Power taken by the Customer during a period of Generation Outage which exceeds the Amount of Power on Order and which is

required to temporarily replace that generating capacity which is rendered unavailable to the Customer due to a Generation Outage and which is supplied to the Customer in accordance with Clause 5.01;

- (q) **“Generation Outage Energy”** means the Energy associated with Generation Outage Demand;
- (r) **“Generation Outage Power”** means the Demand associated with Generation Outage Demand and the Energy associated with Generation Outage Energy;
- (s) **“Interruptible Demand”** means that part of a Customer's Demand, other than the Demand associated with Generation Outage Power, which exceeds its Power on Order, which may be interrupted, in whole or in part, at the discretion of Hydro, and which is supplied to the Customer in accordance with Clause 4.01;
- (t) **“Interruptible Energy”** means the Energy associated with Interruptible Demand, determined as that Energy taken in each fifteen-minute interval in which Interruptible Demand is taken and it shall be deemed that in such cases Firm Energy is taken at 100 percent load factor;
- (u) **“Interruptible Power”** means the Demand associated with Interruptible Demand and the Energy associated with Interruptible Energy;
- (v) **“Maximum Demand”** means the greatest amount of Demand taken during the appropriate Month or part of a Month, as the case may be, and reduced by any applicable Generation Outage Demand, Interruptible Demand, and any Demand associated with Secondary Energy, averaged over each consecutive period of fifteen minutes duration commencing on the hour and ending each fifteen minute period thereafter, and measured by a demand meter of a type approved for revenue metering by the appropriate department of the Government of Canada;
- (w) **“Month”** means a calendar month;
- (x) **“Planned Outage”** means an outage or reduction of capacity of the Customer's generation or transmission system undertaken by the Customer for scheduled maintenance communicated to Hydro not less than one week in advance of the start of that outage or reduction;
- (y) **“Power”** means the amount of electrical power delivered at any time and measured in kilowatts (kW);
- (z) **“Province”** means the Province of Newfoundland and Labrador;
- (aa) **“Rate Schedules”** means the schedules of rates that are approved by the Board for the sale and purchase of Demand and Energy;

- (bb) **“Secondary Energy”** means that Energy which is surplus to Hydro’s needs and, if not sold, would likely result in spillage at one or more of Hydro’s hydraulic generating stations;
 - (cc) **“Specifically Assigned Charge”** means the payment made by the Customer in each Month, calculated according to a method approved by the Board, for the use of Specifically Assigned Plant;
 - (dd) **“Specifically Assigned Plant”** means that equipment and those facilities which are owned by Hydro and used to serve the Customer only;
 - (ee) **“Standby or Emergency Energy Source”** means the energy source associated with Industrial Non-Firm Energy as published in Newfoundland and Labrador Hydro’s Schedule of Rates, Rules and Regulations;
 - (ff) **“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 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.
- 1.02 Hydro and the Customer agree that they are bound by this Agreement, which supersedes and replaces any previous Power Service Agreement, and by the agreements and covenants contained in the Rates Schedules. In the event of a conflict between this Agreement and the Rates Schedules, the Rates Schedules shall have priority.
- 1.03 In this Agreement all references to dollar amounts and all references to any other money amounts are, unless specifically otherwise provided, expressed in terms of coin or currency of Canada which at the time of payment or determination shall be legal tender herein for the payment of public and private debts.
- 1.04 Words in this Agreement importing the singular number shall include the plural and vice versa and words importing the masculine gender shall include the feminine and neuter genders.
- 1.05 Where a word is defined anywhere in this Agreement, other parts of speech and tenses of the same word have corresponding meanings.
- 1.06 Wherever this Agreement prescribes a number of days for any purpose, the days shall be reckoned exclusively of the first and inclusively of the last.

- 1.07 The headings of all the articles are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.08 Any reference in this Agreement to an Article, a Clause, a subclause or a paragraph shall, unless the context otherwise specifically requires, be taken as a reference to an article, a clause, a subclause or a paragraph of this Agreement.
- 1.09 This Agreement may be executed in two or more counterparts, each of which when so executed shall be deemed to be an original, but all of such counterparts together shall constitute one and the same instrument.

ARTICLE 2
AMOUNT OF POWER ON ORDER

- 2.01 Subject to this Agreement, Hydro agrees to deliver to the Customer and the Customer agrees to purchase from Hydro the Amount of Power on Order.
- 2.02 The Customer shall declare to Hydro in writing, not later than October 1 of each calendar year, its Amount of Power on Order for the following calendar year. Such declarations may provide for an Amount of Power on Order to apply throughout the calendar year, or may provide for one or more successive increases at specified times during the calendar year, but subject to Clause 2.05, may not provide for a decrease other than a decrease to take effect on January 1st of that following calendar year. The Amount of Power on Order shall not increase by more than 12,000 kilowatts from the Amount of Power on Order that applied in the previous calendar year, unless it is deemed available by Hydro, but in no event shall exceed 24,000 kilowatts.
- 2.03 Hydro will supply all future Power requirements requested by the Customer additional to the amounts specified in Clause 2.02 provided that the Customer's request for such additional Power shall be made upon adequate notice so that Hydro may make suitable extensions or additions to its system, if necessary.
- 2.04 If Hydro cannot fully comply with a declaration of Amount of Power on Order made in accordance with Clause 2.02 it will, as soon as practicable and in any event not later than November 1 of the year in which the declaration was made, advise the Customer of the extent to which it can comply. If more than one industrial customer requests an increase in their Amount of Power on Order and Hydro cannot in its judgment provide enough Power to satisfy all of the timely requests it has received, Hydro will offer additional Amounts of Power on Order to the industrial customers who made those requests in such amounts as are prorated in accordance to the quantity of additional Amounts of Power on Order in the timely requests it has received from those customers.
- 2.05 The Customer hereby acknowledges that Hydro cannot deliver Power to the Customer unless it is consumed by the Customer. If at any time the Customer does not consume the Power that it has obligated itself to pay for in this Agreement, then, subject to Article 10, the readiness of Hydro to

deliver such Power, as evidenced by the maintenance of normal voltage and frequency at the Delivery Point(s), shall constitute a valid tender by Hydro to the Customer of such Power.

- 2.06 In no event shall Hydro be obliged to deliver Power in excess of that which it has agreed to deliver pursuant to this Article 2 and the Customer shall manage its Demand such that its Maximum Demand does not exceed its Amount of Power on Order, subject to Article 4 and Article 5.

ARTICLE 3
PURCHASE AND SALE OF DEMAND AND ENERGY

- 3.01 The sale and purchase of Demand and Energy shall be at such prices and upon such terms and conditions as are set out in the Rate Schedules and this Agreement.
- 3.02 Notwithstanding anything to the contrary herein, the Customer shall pay in each Month its Specifically Assigned Charge, its applicable Demand charges, and its applicable Energy charges.

ARTICLE 4
INTERRUPTIBLE POWER

- 4.01 The Customer may in any Month take an amount of Interruptible Power in addition to the Amount of Power of Order which shall be billed at Interruptible Demand and Energy rates approved by the Board. The amount of Interruptible Power available shall be 5,000 kW. If Hydro is willing and able to serve the Customer's Interruptible Power, then the following shall apply:
- (a) The Customer shall, if practicable, make a prior request for, or otherwise as soon as practicable notify Hydro of its requirement for Interruptible Power, specifying the amount and duration of its Interruptible Power requirements. Such request or notification may be made by telephone or email and confirmed by email to Hydro officials, who shall advise the Customer if such Interruptible Power will be made available.
 - (b) If serving the Customer's Interruptible Power would result in Hydro generating, or increasing or prolonging generation, from a Standby or Emergency Energy Source, then Hydro will so advise the Customer. If the Customer wishes to purchase Interruptible Demand and Energy at such a time or times, that Demand and Energy shall be charged for as calculated by the method or formula approved by the Board in Newfoundland and Labrador Hydro's Schedule of Rates, Rules and Regulations in the "Industrial – Non-Firm" rate sheet.

ARTICLE 5
GENERATION OUTAGE POWER AND SECONDARY ENERGY

- 5.01 In the event that the Customer experiences or requires a Generation Outage, in addition to its Power on Order and any applicable Interruptible Power it may be taking, it may take an amount of Generation Outage Power at Interruptible Demand and Energy rates approved by the Board. The availability of Generation Outage Power shall be subject to Hydro's capability to deliver it, which Hydro shall determine at its sole discretion. The Generation Outage Power taken in any instance shall not exceed the amount of generating capacity rendered unavailable because of the Generation Outage. If Hydro is willing and able to provide the Customer with Generation Outage Power, then the following shall apply:
- (a) The Customer shall, if practicable, make a prior request for, or otherwise as soon as practicable notify Hydro of its requirement for Generation Outage Power, specifying the amount and duration of its Generation Outage Power requirements. Such request or notification may be made by telephone or email and confirmed by email to Hydro officials, who shall advise the Customer if such Generation Outage Power will be made available. While requesting or taking Generation Outage Power, the Customer shall notify Hydro of all circumstances and particulars as to the Generation Outage as soon as practicable and shall keep Hydro informed as those circumstances and particulars change. The Customer shall not make undue requests for Generation Outage Power and it shall restore normal operating conditions as soon as reasonably possible.
 - (b) If serving the Generation Outage Power would result in Hydro generating from, or increasing or prolonging generation from a Standby or Emergency Energy Source, then Hydro will so advise the Customer. If the Customer wishes to purchase Generation Outage Power at such a time or times, that Demand and Energy shall be charged for as calculated by the method or formula approved by the Board in Newfoundland and Labrador Hydro's Schedule of Rates, Rules and Regulations in the "Industrial – Non-Firm" rate sheet.
- 5.02 If Hydro has Energy capability and the Customer desires to purchase it, and provided that appropriate metering is in place, Hydro will deliver Secondary Energy to the Customer for use in its electric boilers. The quantity and availability of Secondary Energy shall be determined by Hydro in its sole discretion, however, once declared to be available, Secondary Energy shall remain available for a period of not less than 72 hours. The rate to be paid for Secondary Energy shall be determined by the Board.

ARTICLE 6
DETERMINATION OF BILLING DEMAND

- 6.01 Subject to Article 11, the Customer's Billing Demands, which shall each be charged at the applicable rates as approved by the Board, shall comprise the following:
- (a) the Billing Demand for Firm Power, which in each Month shall be the greater of:

(i) the Amount of Power on Order,

(ii) the lesser of 75% of the Amount of Power on Order for the prior calendar year and, the Amount of Power on Order for the prior calendar year less 20,000 kW,

or

(iii) the highest Maximum Demand taken up to that time in the calendar year; and

(b) the maximum Interruptible Demand for that Month.

ARTICLE 7
CHARACTERISTICS OF POWER SERVICE AND POINTS OF DELIVERY

- 7.01 The Demand and Energy to be supplied under this Agreement will be delivered to the Customer at three (3) phase alternating current having a normal frequency of sixty (60) cycles and at a voltage to be determined by Hydro and the Customer, and delivery will be made at the Delivery Points Hydro.
- 7.02 Hydro will exercise its best efforts to limit variation from the normal frequency and voltage to tolerable values.

ARTICLE 8
POWER FACTOR

- 8.01 The Customer agrees to consume the Power contracted for in this Agreement at a power factor of not less than ninety percent (90%) lagging at the Delivery Points Hydro.
- 8.02 Should the power factor be consistently less than ninety percent (90%) lagging, the Customer, upon written notification from Hydro, agrees to install suitable corrective equipment to bring the power factor to a minimum of ninety percent (90%) lagging.
- 8.03 If the Customer should install static condensers to correct the lagging power factor, the equipment shall be installed such that it can be completely disconnected at the request of Hydro.

ARTICLE 9
METERING

- 9.01 The metering equipment and meters to register the amount of Demand and Energy to be delivered to the Customer under this Agreement shall be furnished and owned by Hydro and if required to be located on the Customer's premises will be installed by Hydro in a suitable place satisfactory to Hydro and provided by the Customer, and in such manner as to register accurately the total amount of Demand and Energy taken by the Customer under this Agreement.

- 9.02 If the metering is installed on the low side of transformers that are Specifically Assigned Plant or owned by the Customer, an appropriate adjustment will be made to account for losses in the transformers. Also, appropriate adjustments will be made to recognize the Demand and Energy delivered to Delivery Points Newfoundland Power from the Customer's generation and transmission systems.
- 9.03 The Customer shall have the right, at its own expense, to install, equip and maintain check meters adjacent to Hydro's meters.
- 9.04 Authorized employees of Hydro shall have the right of access to all of Hydro's meters at all reasonable times for the purpose of reading, inspecting, testing, repairing or replacing them.
- 9.05 Should any meter fail to register accurately, and to the extent that this clause does not conflict with the Electricity and Gas Inspection Act, RSC 1985, c. E-4, the check meters provided by the Customer shall be used for measuring the amount of Demand and Energy delivered while the Hydro meters are out of service. Should the Customer's check meters fail to register accurately then Hydro may charge for the Demand and Energy delivered during the period when the registration was inaccurate, either,
- (a) on the basis of the amount of Demand and Energy charged for
 - (i) during the corresponding term immediately succeeding or preceding the period of alleged inaccurate registration, or
 - (ii) during the corresponding term in the previous calendar year; or
 - (b) on the basis of the amount of Demand and Energy supplied as established by available evidence,
- whichever basis appears most fair and accurate to both the Customer and Hydro.

ARTICLE 10
LIABILITY FOR SERVICE

- 10.01 Subject to the provisions of the Rate Schedules and this Agreement, the Power and Energy herein contracted for will be made available for use by the Customer during twenty-four (24) hours on each and every day of the term of this Agreement.
- 10.02 The obligation of Hydro to furnish Power and Energy under this Agreement is expressly subject to all accidents or causes that may occur at any time and affect the generation or transmission of such Power and Energy, and in any such event, but subject to Clause 10.04, Hydro shall have the right in its discretion to reduce or, if necessary, to interrupt the delivery of Power and Energy under this Agreement.
- 10.03 Hydro shall cause all reasonable precautions to be taken in order to guard against reductions,

fluctuations and interruptions in the delivery of Electricity and shall cause all such reductions, fluctuations or interruptions that occur to be terminated with all possible dispatch. If reductions, fluctuations or interruptions are necessary or unavoidable for repair, overhauling or inspection of equipment or for improving or adding to its equipment, where practical Hydro shall coordinate with the Customer in advance and give the Customer reasonable notice of any anticipated reduction, fluctuation or interruption of any amount of Electricity so that inconvenience and loss to the Customer may be minimized. If practical, Hydro will schedule any needed reductions, fluctuations and interruptions at times coordinated with the Customer such that the Customer's operational needs and considerations are considered and reasonably accommodated.

- 10.04 Unless the Customer suffers damages due to the willful acts or negligence of Hydro, and subject always to Clauses 10.08 and 10.09 and Article 11, the Customer's sole remedy for an interruption or reduction in the delivery of Electricity by Hydro to the Customer shall be the right to reduce its Billing Demand in accordance with Article 11.
- 10.05 If the operations of Hydro or the operations of its suppliers are suspended or curtailed by reason of Force Majeure, Hydro shall use due diligence to remove the cause of such suspension or curtailment and to resume normal operations at the earliest possible date and, in the event such suspension or curtailment of operations of Hydro or its suppliers results in the suspension or curtailment of the operations of the Customer for a period of more than seven (7) days thereafter occurring during the continuance of such period of curtailment or suspension of the operations of Hydro or its suppliers, the Customer's sole remedy shall be the right to reduce its Billing Demand in respect of the period of such suspension or curtailment by an amount of Power proportionate to the reduction of the amount of Power actually made available by Hydro and resulting from such suspension or curtailment of the operations of Hydro or its suppliers, including such seven (7) day period.
- 10.06 If the operations of the Customer are suspended or curtailed owing to Force Majeure, the Customer shall use due diligence to remove the cause of such suspension or curtailment and to resume normal operations at the earliest possible date, but if as a result of such suspension or curtailment, the Power taken by the Customer is reduced below fifty percent (50%) of the Amount of Power on Order, for any period exceeding seven (7) days, then, the Customer's sole remedy shall be the right to reduce its Billing Demand in respect of the period of such suspension or curtailment by an amount of Power proportionate to the reduction of the amount of Power actually taken by Customer and resulting from such suspension or curtailment of the operations of the Customer, including such seven (7) day period.
- 10.07 Nothing in Clause 10.06 shall obligate the Customer to settle or resolve (or attempt to settle or resolve) a strike or other labour issue or interruption (or threatened strike or other labour issue or interruption).
- 10.08 Notwithstanding any other provision contained herein, neither Hydro nor the Customer shall:
- (a) be responsible to other for injury, damages or losses arising from loss of business, loss of

profits, or any other losses as a result of interruption of the other's operations, or any other consequential losses, directly or indirectly arising out of the activities, occupancy, use or operation of the other's premises; or

- (b) look to or pursue the directors, officers or employees of the other for satisfaction of any claim or cause of action arising under this agreement, including any liability, damages, expenses or losses of any nature.

10.09 In no event shall the liability of either party exceed the sum of \$1,000,000.00 for any single occurrence.

ARTICLE 11
REDUCED BILLING DEMAND

11.01 If, in accordance with Clauses 10.04, 10.05 or 10.06, the Customer requests a reduction in its Billing Demand, such reduction will be made according to the following:

- (a) If there is a total interruption of the delivery of Power and Energy by Hydro for a whole Month, the Customer Billing Demand for such Month shall be zero.
- (b) If there is a total interruption of Power for part of a Month, the Billing Demand for that Month shall be reduced by an amount of Power bearing the same ratio to that Billing Demand as the number of hours during which the interruption occurs bears to the total number of hours in that Month.
- (c) If the reduction of Power is made for a whole Month, then, subject to subclause 11.01(e), the reduced Billing Demand for that Month shall be substituted for the Billing Demand for the same Month, when determining the price of Power and Energy for that Month.
- (d) If the reduction of Power is made for part of a Month, then, subject to subclause 11.01(e), the Billing Demand for such Month shall be determined by adding:

the reduced Billing Demand for the part of the Month during which the reduction was made, averaged over the whole of that Month;

to

the Billing Demand for the part of the Month during which no reduction was made, averaged over the whole of that Month.

- (e) In no event shall the reduced Billing Demand in any period be lower than the Maximum Demand in that same part of the Month.

- (f) Where a Billing Demand, a reduced Billing Demand or a Maximum Demand for a part of a Month is to be averaged for the whole of that Month in accordance with subclause 11.01(d), the averaging shall be done by dividing the Billing Demand, the reduced Billing Demand or the Maximum Demand, as the case may be, by the total number of hours in the whole of that Month and multiplying the result by the number of hours to which the Billing Demand, the reduced Billing Demand or the Maximum Demand relates.
- 11.02 In addition to the reductions in Billing Demand that may be made in accordance with Clause 11.01, Hydro may, in its sole judgment and discretion, make other Billing Demand adjustments from time to time to decrease the Customer's bill to reflect unusual or unanticipated conditions or to facilitate the testing of equipment or processes by the Customer.

ARTICLE 12
CONSTRUCTION OR INSTALLATION OF TRANSMISSION LINES OR APPARATUS

- 12.01 For the consideration aforesaid, the Customer hereby grants to Hydro the right to construct transmission lines and accessory apparatus on locations approved by the Customer on, under or over the property of the Customer for the purpose of serving the Customer and the other customers of Hydro, together with the right of access to the property of the Customer at all times for the construction of such lines and apparatus and for the repair, maintenance and removal thereof, provided that nothing in this clause shall entitle Hydro to construct transmission lines and accessory apparatus on or over the Customer's property if such transmission lines are not directly connected with the Customer's premises or some part thereof.
- 12.02 The Customer shall not erect any building, structure or object on or over any right-of-way referred to in Clause 12.01 without the written approval of Hydro, but subject to that limitation the Customer shall be entitled to make fair and reasonable use of all lands subjected to the said right-of-way.
- 12.03 Any changes that the Customer may request Hydro to make in the location of any lines or apparatus constructed pursuant to Clause 12.01 shall be made by Hydro, but the Customer shall bear the expense of any such changes to the extent that such lines or apparatus deliver Power to the Customer.
- 12.04 All transmission lines and apparatus of Hydro furnished and installed by it on the Customer's premises shall remain the property of Hydro, and Hydro shall be entitled to remove or retain such transmission lines and apparatus on the expiry or termination of this Agreement.
- 12.05 For the purpose of using the power service of Hydro, the Customer shall install properly designed and suitable apparatus in accordance with good engineering practice, and shall at all times operate and maintain such apparatus so as to avoid causing any undue disturbance on the system of Hydro, and so that the current shall be approximately equal on all three of its phases.
- 12.06 If, at any time, the unbalance in current between any two of its phases is, in the judgment of Hydro, excessive to a degree that the power delivery system of Hydro and/or the electrical

equipment of any other customer of Hydro is adversely affected, then it shall be the responsibility of the Customer to take such reasonable remedial measures as may be necessary to reduce the unbalance to an acceptable value.

- 12.07 If, at any time during the term of this Agreement, Hydro desires to improve the continuity of power service to any of its customers, Hydro and the Customer will co-operate and use their reasonable commercial efforts to carry out the improvements either by changes to existing equipment or additions to the original installations of either Hydro or the Customer.
- 12.08 The Customer shall not proceed with the construction of or major alterations of its equipment or structures associated with any terminal station at which Power and Energy is being delivered until Hydro is satisfied that the proposals for such construction or alteration are in accordance with good engineering practice and the laws and regulations of the Province, provided that any examination of the Customer's proposals by Hydro shall not render Hydro responsible in any way for the construction or alteration proposed, even if electrical connection is made by Hydro, whether or not any changes suggested by Hydro shall have been made by the Customer.

ARTICLE 13
RESPONSIBILITY FOR DAMAGES

- 13.01 Beyond the Delivery Points Hydro, the Customer shall indemnify and hold Hydro harmless with respect to any and all claims that may be made for injuries or damages to persons or property caused in any manner by electric current or by the presence or use on the Customer's premises of electric circuits or apparatus, whether owned by Hydro or by the Customer, unless and to the extent that such injuries or damages are caused by negligence on the part of the employees of Hydro.
- 13.02 Up to the Delivery Points Hydro, Hydro shall indemnify and hold the Customer harmless with respect to any and all claims that may be made for injuries or damages to persons or property caused in any manner by electric current or by the presence or use on the Customer's premises of electric circuits or apparatus owned by Hydro and resulting from or arising out of the negligence of Hydro's employees or other persons for whom Hydro would in law be liable, unless and to the extent that such injuries or damages are caused by negligence on the part of the employees of the Customer.
- 13.03 If any of the transmission lines or apparatus installed by Hydro on the Customer's premises should be destroyed or damaged by the negligence of the Customer, its servants or agents, the Customer shall reimburse Hydro for the cost of their replacement or repair.

ARTICLE 14
PAYMENT OF ACCOUNTS AND NOTICE OF CLAIMS OF CUSTOMER

- 14.01 Hydro will render its accounts monthly and the Customer shall, within twenty (20) days after the date of rendering any such account, make payment in lawful money of Canada at the office of Hydro in St. John's, Newfoundland, or in such other place in the said Province as Hydro may

designate, without deduction for any claim or counterclaim which the Customer may have to claim to have against Hydro arising under this Agreement or otherwise.

- 14.02 Hydro and the Customer acknowledge that, notwithstanding any other provision of this Agreement, any amounts payable by the Customer to Hydro pursuant to this Agreement exclude HST and include all other Taxes. If Hydro is required to collect from the Customer an amount of HST with respect to the provision of any goods or services supplied pursuant to this Agreement, such amounts shall be identified separately on the invoice and the Customer shall pay the amount of such HST to Hydro.
- 14.03 All amounts in arrears after the expiration of the period of twenty (20) days referred to in Clause 14.01 shall bear interest at the rate of five percent (5%) per annum above the Bank of Canada prime business rate (publication V122495) or its successor rate, calculated daily not in advance, to and including the date of payment, and interest accrued will be payable on demand.
- 14.04 If the Customer is in default for more than thirty (30) days in paying any amount due Hydro under this Agreement, then, without prejudice to its other recourses and without liability therefor, Hydro shall, upon ten (10) days written notice to the Customer of its intention so to do, be entitled to suspend the delivery of Power and Energy to the Customer until the said amount is paid, and if the delivery is so suspended, the Customer shall not be relieved of its obligations under this Agreement.
- 14.05 The Customer and Hydro will submit to the other in writing every claim or counterclaim which each may have or claim to have against the other arising under this Agreement within sixty (60) days of the day upon which the Customer or Hydro has knowledge of the event giving rise to such a claim.
- 14.06 The Customer and Hydro shall be deemed to have waived all rights for the recovery of any claim or counterclaim which has not been submitted to the other party pursuant to and in accordance with Clause 14.05.
- 14.07 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 the applicable law. Hydro shall pay or cause to be paid all Taxes on or with respect to the Electricity up to the Delivery Point(s). Customer shall pay or cause to be paid all Taxes on or with respect to the Electricity beyond the Delivery Points Hydro. For the computation of amounts of Electricity delivered at the Delivery Points Hydro and the Taxes so calculated, amounts determined through metering will be subject to any appropriate losses calculated in accordance with Clause 9.02. For greater certainty:
- (a) Hydro is solely responsible for the payment of Taxes payable by Hydro; and
 - (b) Customer is solely responsible for the payment of Taxes payable by Customer.

ARTICLE 15
ARBITRATION

- 15.01 Any dispute or differences between Hydro and the Customer concerning this Agreement which cannot be resolved or settled by Hydro and the Customer shall be settled by final and binding arbitration in the City of St. John's, Newfoundland and Labrador, or such other place as the parties mutually agree, at the request of either party pursuant to the provisions of the Arbitration Act (Newfoundland and Labrador), subject to the specific terms hereof. The party desiring arbitration shall notify the other party of its intention to submit any dispute(s) or difference(s) to arbitration as well as a brief description of the matter(s) to be submitted for arbitration. Should Hydro and the Customer fail to agree on a single arbitrator to settle the relevant dispute(s) or difference(s) within fifteen (15) days of delivery of the aforesaid notice, then each such party shall within thirty (30) days thereafter nominate an arbitrator having expertise with respect to the subject matter(s) under dispute (failing which nomination by a party, the arbitrator nominated by the other party may proceed to determine the dispute alone as he or she shall deem fit) and the two (2) arbitrators so selected shall select a third arbitrator to serve as a chairperson of the arbitral tribunal of similar expertise to act jointly with them. If said arbitrators shall be unable to agree in the selection of such chairperson within thirty (30) days of the expiry of the aforesaid thirty (30) day arbitrator nomination period, the chairperson shall be selected as contemplated in the aforesaid Arbitration Act. The costs of the arbitration shall be borne by the parties hereto as may be specified in the determination of the arbitrator(s). The arbitrator(s) shall further be authorized to retain such legal counsel and other professional advisors to provide any advice to the arbitrator(s) as the arbitrator(s) deem appropriate. The decision of the single arbitrator or any two (2) of the three (3) arbitrators, as the case may be, shall be non-appealable, final and binding with respect to the issue(s) in dispute.

ARTICLE 16
MODIFICATION OR TERMINATION OF AGREEMENT

- 16.01 Except, where otherwise specifically provided in this Agreement and only to the extent so provided, all previous communications between Hydro and the Customer, either oral or written, with reference to the subject matter of this Agreement, are hereby abrogated and this Agreement shall constitute the sole and complete agreement between Hydro and the Customer in respect of the matters herein set forth.
- 16.02 At any time while this Agreement is in effect, the Customer may terminate it by giving to Hydro two (2) years notice in writing of its intention so to do.
- 16.03 Any amendment, change or modification of this Agreement shall be binding upon Hydro and the Customer, or either of them only if such amendment, change or modification is in writing and is executed by Hydro and the Customer by its duly authorized officers or agents and in accordance with their respective regulations or by-laws.
- 16.04 In the event that the Board sets terms and conditions of rates to be charged by Hydro to the

Customer for the Electricity delivered hereunder and those rates are inconsistent with the terms and conditions set out in this Agreement, the rates set by the Board shall prevail.

ARTICLE 17
SUCCESSORS AND ASSIGNS

- 17.01 This Agreement shall be binding upon and enure to the benefit of Hydro and the Customer and their respective successors and assigns, but it shall not be assignable by the Customer without the written consent of Hydro with such consent not to be unreasonably withheld.

ARTICLE 18
GOVERNING LAW AND FORUM

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

ARTICLE 19
COMMUNICATION BETWEEN HYDRO AND THE CUSTOMER

- 19.01 Subject to Clauses 19.02 and 19.03, any notice, request or other instrument which is required or permitted to be given, made or served under this Agreement by either Hydro or the Customer, except for notices or requests pertaining to Interruptible Power, Generation Outage Power, or Secondary Energy, shall be given, made or served in writing and shall be deemed to be properly given, made or served if personally delivered, or sent by email, or mailed by prepaid registered post, addressed, if service is to be made

- (a) on Hydro, to

The Secretary
Newfoundland and Labrador Hydro
Hydro Place
P.O. Box 12400
St. John's, Newfoundland
CANADA. A1B 4K7
or

- (b) on the Customer, to

Mill Manager
Corner Brook Pulp and Paper Limited
P.O. Box 2001
Corner Brook, Newfoundland
A2H 6J4

- 19.02 Any notice mailed by prepaid registered mail will be conclusively deemed to have been given on the fourth day after mailing thereof and, if given by email, will be conclusively deemed to have

been given on the day of transmittal thereof if given during the normal business hours of the recipient and on the next Business Day during which such normal business hours next occur if not given during such hours on any day; provided that, in each case, confirmation of receipt is received by the party giving the Notice. If the party giving any Notice knows or ought reasonably to know any difficulties with the postal system that might affect the delivery of mail, any such Notice must not be mailed but must be given by email.

Except for notices for Interruptible Power, Generation Outage Power, or Secondary Energy, whenever this Agreement requires a notice to be given or a request to be made on a day that is not a Business Day, such notice or request may be given or made on the first Business Day occurring thereafter. Notices or requests pertaining to Interruptible Power, Generation Outage Power, or Secondary Energy may be given and received by and to the appropriate nominees of Hydro and the Customer by voice or electronic communication provided that it is confirmed in writing and transmitted or delivered by email, courier or mail as soon as practicable.

- 19.03 Either Hydro or the Customer may change the address to which a notice, request or other instrument may be sent to it by giving the other party notice of such change, and thereafter, every notice, request or other instrument shall be delivered or mailed in the manner prescribed in Clause 19.01 to such party at the new address.

ARTICLE 20
LIQUIDATED DAMAGES

- 20.01 Subject to Article 11, if the Customer voluntarily or forcibly abandons its operations, commits an act of bankruptcy or liquidates its assets, then there shall, forthwith, become due and payable to Hydro by the Customer, as stipulated and liquidated damages without burden or proof thereof, a lump sum equal to:

- (a) 0.85 of its then current Billing Demand for Firm Power, at the Firm Power Demand rate, multiplied by 24;

plus

- (b) the remaining net book value of Specifically Assigned Plant, less its salvage value.

IN WITNESS WHEREOF Newfoundland and Labrador Hydro and the Customer has each executed this Agreement by causing it to be executed in accordance with its by-laws or regulations and by its duly authorized officers or agents, the day and year first above written.

THE CORPORATE SEAL of
Newfoundland and Labrador Hydro was
hereunder affixed in the presence of:

Witness

DULY EXECUTED by
Corner Brook Pulp and Paper Limited
in accordance with its Regulations
or By-Laws in the presence of:

Witness

NEWFOUNDLAND AND LABRADOR HYDRO AND CORNER BROOK PULP AND PAPER LIMITED
SURPLUS FIRM ENERGY POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is made the ____ day of _____, 20____.
BETWEEN:

CORNER BROOK PULP AND PAPER LIMITED a company organized under the laws of Newfoundland and Labrador (“CBPP”)

- and -

NEWFOUNDLAND AND LABRADOR HYDRO, a body corporate continued pursuant to the *Hydro Corporation Act, 2007* being Chapter H-17 of the *Statutes of Newfoundland and Labrador, 2007* ("Hydro")
(Hereinafter referred to individually as a “Party” and collectively the “Parties”)

WHEREAS:

1. CBPP has from time to time surplus capacity and energy from its hydroelectric generating facilities that it would like to offer to sell to Hydro (“Surplus Firm Energy”), and
2. At times during the Term of this Agreement, Hydro may wish to purchase the Surplus Firm Energy from CBPP to supplement or offset purchases over the Maritime Link or generation from at the Holyrood Thermal Generating Station, all in accordance with the terms and conditions of this Agreement.

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

1. **Term and Termination** – This Agreement shall become effective once it has been approved by the Board of Commissioners of Public Utilities of Newfoundland and Labrador Board and will terminate after one (1) year. This Agreement may be further extended for successive periods of one (1) year should the parties agree, in writing, prior to the expiry of the preceding one (1) year period.
2. **Schedules** – The following schedules are attached to and incorporated by reference into this Agreement, and are deemed to be part hereof.

Schedule 1 – Information Sharing

Schedule 2 – Agreement to Transact

3. **Transactions** – There may be times during the Term of this Agreement that Hydro may wish to enter into an Agreement to Transact with CBPP to purchase specific quantities of Surplus Firm Energy over specific time periods in order to reduce production at its own facilities or to offset imports. To assess opportunities for such purchases by Hydro, Hydro and CBPP agree to share information as outlined in Schedule 1, and upon mutual agreement, execute an Agreement to

Transact as outlined in Schedule 2.

4. **No Obligation** – Hydro has no obligation to buy energy from CBPP under this Agreement unless an Agreement to Transact is confirmed.
5. **Delivery** – CBPP shall deliver Surplus Firm Energy as committed in an Agreement to Transact at the Delivery Points Hydro (as defined in the 2020 Service Agreement) and Hydro shall take delivery of the Surplus Firm Energy at the Delivery Points Hydro.
6. **CBPP Failure to Deliver** – If CBPP fails to deliver all or part of the Surplus Firm Energy pursuant to an Agreement to Transact, and such failure is not as a result of a Force Majeure event or the unavailability of the transmission system, then CBPP shall pay Hydro an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the price in the Agreement to Transact to Hydro's Replacement Cost as described below. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amounts.

Hydro's Replacement Cost means the cost at which Hydro, acting in a commercially reasonable manner, purchases replacement energy or incurs increased production costs at Holyrood to replace the Surplus Firm Energy committed to in an Agreement to Transact but not delivered by CBPP.

A delivery of up to plus or minus 5 MW of the capacity confirmed in the Agreement to Transact shall not be considered a failure to deliver.

7. **Cancellation of a Transaction** – An Agreement to Transact may be cancelled if mutually agreed by both parties.
8. **Force Majeure** – Each Party has the right to suspend delivery or acceptance of the Firm Energy in the case of Force Majeure which impacts the performance of the Party of any or all of its obligations under this Agreement. For the purposes of this contract, Force Majeure is an Act of God, fire, flood, tidal wave, lightning, earthquake, cyclone, epidemic, pandemic, acts of a competent authority, acts of public enemies, terrorism, civil commotion, war, invasion, embargo, insurrection, rebellion, sabotage, protest, riot, violence, malicious mischief, extortion, strike, labour dispute or lockout and includes any other cause which could not have been avoided by the exercise of reasonable human foresight and skill
9. **Invoicing** – In months where there is an Agreement to Transact, CBPP shall render its accounts monthly, at the end of each month, and Hydro shall, within twenty (20) days of receiving such invoice, make payment in lawful money of Canada by means of direct deposit into a Canadian bank account of CBPP.

10. **Taxes (General)** – 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. CBPP shall pay or cause to be paid all taxes on or with respect to the Surplus Firm Energy arising prior to the Delivery Points Hydro. Hydro shall pay or cause to be paid all taxes on and with respect to the Surplus Firm Energy at and from the Delivery Points Hydro.
11. **HST** – All invoices shall include all information prescribed by applicable law 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, including:
- (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.
12. **Confidentiality** – The Parties have entered into a Confidentiality and Non-Disclosure Agreement dated _____ herewith (the “NDA”). The Parties agree that this Agreement and all discussions and information exchanged between the Parties in connection with this Agreement will constitute “confidential information” for the purposes of the NDA and will be held in confidence in accordance with the NDA.
13. This Agreement shall be governed by and construed in accordance with the laws of Newfoundland and Labrador and the Federal laws of Canada applicable therein. Each Party irrevocably consents and submits to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that any such court is an inconvenient forum.

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

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

Executed and delivered by Newfoundland
and Labrador Hydro in the presence of:

**NEWFOUNDLAND AND LABRADOR
HYDRO**

By: _____
Name:
Title:

Name:

By: _____
Name:
Title:

Executed and delivered by Corner Brook
Pulp and Paper Limited in the presence of:

**CORNER BROOK PULP AND PAPER
LIMITED**

By: _____
Name:
Title:

Name:

By: _____
Name:
Title:

SCHEDULE 1 – INFORMATION SHARING

A. Communication Protocol

CBPP will provide weekly written updates, by way of email, on the status of its operations and the potential availability of Surplus Firm Power. At a minimum, CBPP will provide the amount of Surplus Firm Energy that may be available and over what period. CBPP will also include any other information that it feels could be beneficial to informing any decision by Hydro to pursue a transaction.

Hydro, or a designate of Hydro, will acknowledge receipt of the information from CBPP and will inform CBPP of any intent to enter into further discussions not less than one week prior to the start of any potential transaction.

B. Agreement to Transact

Hydro and CBPP will review the information provided through the Communication Protocol to determine, each acting in its own interest, if it wishes to pursue an Agreement to Transact. If both Parties agree to pursue an Agreement to Transact, it will be confirmed through the completion and approval of an Agreement to Transact as provided in Schedule 2. Until such Agreement to Transact is completed, Hydro is not obligated to purchase, and CBPP is not obligated to sell, any Surplus Firm Energy.

If multiple Agreements to Transact are executed for the same time period then the first products to be delivered shall be deemed to have been transacted under the first Agreement to Transact until all quantities have been fulfilled.

C. Amounts of Surplus Firm Energy

In the Agreement to Transact, hourly quantities of capacity and energy from CBPP to Hydro will be mutually agreed, but will be in whole increments of 5 MW and in range of 10 MW to 105 MW.

D. Price

The Parties will agree to the price Hydro will pay to CBPP for all Surplus Firm Energy under this agreement. The price will be agreed prior to scheduling deliveries and confirmed by the Parties in the Agreement to Transact. Hydro will only pay CBPP for Surplus Firm Energy actually delivered as per item C of this Schedule 1.

CBPP may set a price for its Surplus Firm Energy expressed in \$/MWh which is equal to, or lower than, the lesser of:

- (1) The previous months Industrial Non-Firm Energy Charge for Holyrood as described in the current published Newfoundland and Labrador Hydro Schedule of Rates, Rules and Regulations * 75%, or

- (2) Any price set by CBPP for its Surplus Firm Energy, as determined by Hydro to be the least cost alternative in comparison to imports for a similar time period, duration and quantity.

SCHEDULE 2 – AGREEMENT TO TRANSACT

Transaction Start Date:	
Transaction Start Time (Atlantic Standard Time):	
Price:	If the price is set by CBPP under D(2) in Schedule 1, Hydro confirms that the price is the least cost alternative in comparison to imports for a similar time period, duration and quantity.
Quantities: (Describe if it is all hours the same or if there is an agreed schedule with varied amounts for specific time periods.)	
Transaction End Date:	
Transaction End Time (Atlantic Standard Time):	
Additional Notes:	
NEWFOUNDLAND AND LABRADOR HYDRO:	CORNER BROOK PULP AND PAPER LIMITED:
Signed:	Signed:
Date:	Date:

THIS SECOND AMENDED AND RESTATED CAPACITY ASSISTANCE AGREEMENT made in the Province of Newfoundland as of the ___day of _____20__.

BETWEEN: **NEWFOUNDLAND AND LABRADOR HYDRO** a corporation and agent of the Crown constituted by statute, renamed and continued by the *Hydro Corporation Act, 2007* Chapter H-17 of the 2007 Statutes of Newfoundland and Labrador and having its head office at St. John's, in the Province of Newfoundland and (hereinafter called "Hydro"), of the first part;

AND **CORNER BROOK PULP AND PAPER LIMITED** a company organized under the laws of Newfoundland and Labrador (hereinafter called the "Customer"), of the second part.

WHEREAS Hydro and the Customer are parties to an agreement whereby Hydro sells Electrical Power and Energy to the Customer approved by the Board of Commissioners of Public Utilities for the Province of Newfoundland ("the Board") in Order No. P.U. ____ (20 __) (herein after called the "Service Agreement");

AND WHEREAS the Customer has hydroelectric generating capability which enables it to provide electrical capacity to Hydro;

AND WHEREAS Hydro and the Customer were parties to a capacity assistance agreement for 60 MW of capacity assistance, which commenced on December 1, 2014 and expired on March 31, 2018, which was approved by the Board by Order No. P.U. 49(2014) and which provided a reduction in the overall island electrical system demand during peak hours and periods of system constraint;

AND WHEREAS Hydro and CBPP were parties to a supplemental capacity assistance agreement which also expired on March 31, 2018 and provided for up to an additional 30 MW of capacity assistance through a further interruption of mill operations by CBPP of its operating load;

AND WHEREAS by Order No. P.U. 34(2017) the Board approved the combining of the Capacity Assistance Agreements into one single revised agreement (the "Revised Capacity Assistance Agreement"), which provided up to 90 MW of capacity assistance to Hydro and extended the term to the earlier of April 30, 2022 or the commissioning of the Muskrat Falls Generating Plant;

AND WHEREAS on November 5, 2018, by Order No. P.U. 40(2018), the Board approved an Amended and Restated Capacity Assistance Agreement between Hydro and the Customer which provided for an additional 15 MW of winter capacity assistance to Hydro, such that the total amount of capacity assistance available to Hydro from the Customer was up to 105 MW;

AND WHEREAS Hydro and the Customer desire to enter into this agreement (hereinafter the "Second Amended and Restated Capacity Assistance Agreement") which was approved by the Board under Order No. ____ (20____) and which supersedes and replaces the Amended and Restated Capacity Assistance Agreement;

AND WHEREAS the Board has contemporaneously approved a Surplus Firm Energy Power Purchase Agreement (“Surplus Firm PPA”) in Order No. ____ (20____), which has an impact on the payments contemplated in this Second Amended and Restated Capacity Assistance Agreement,; and

THEREFORE THIS AGREEMENT WITNESSETH that the parties agree as follows:

ARTICLE 1
INTERPRETATION

In this Agreement, unless the context otherwise requires,

- 1.01 (a) “Amount of Power on Order” means the same as it does under the Service Agreement.
- (b) “Capacity Assistance” means a reduction of 20, 40, 60 ,90 or 105 MW in the Mill Load to be established with the original request of Hydro, following (i) the Customer producing power at its maximum available 60Hz hydraulic generating capacity upon Hydro’s request, and (ii) upon Hydro’s request, a cessation of any and all Interruptible Demand by the Customer.
- (c) “Capacity Assistance Request” means a request by Hydro from its Energy Control Center to the Deer Lake Power control room to provide Capacity Assistance in the amounts set out in Article 2.
- (d) “Capacity Assistance Period” is a period of not less than four (4) hours and not more than six (6) hours during which Capacity Assistance is provided in accordance with a Capacity Assistance Request.
- (e) “Capacity Fee” means a fee payable by Hydro to Customer as set forth herein of \$2,992,500 per Winter Period.
- (f) “Demand” means the same as it does under the Service Agreement.
- (g) “Extended Duration Capacity Assistance” means committed Capacity Assistance provided by Customer to Hydro for periods of 24 hours or greater.
- (h) “GTVC” means the previous month’s Gas Turbine Variable Cost as provided on Customer’s monthly invoice as per the Service Agreement and expressed as a cost per KWh.
- (i) “Force Majeure” means any event that is unforeseeable, and beyond a party’s control, which causes a delay in or interrupts or prevents the total or partial performance by that party of any or all of its obligations under this Agreement including, without limiting the generality of the foregoing, war, riot, acts of vandalism, rebellion, epidemic, pandemic, lightning, earthquake, flood, fire, explosion, government decrees or prohibitions or restrictions by any authority of competent jurisdiction affecting the obligations of the party suffering Force Majeure.

- (j) “Ice Condition Event” means any event of frazil ice or other ice conditions at or upstream of the Customer’s Deer Lake generating station penstocks, resulting in whole or in part in the Customer being unable to meet a Capacity Request from Hydro. The Customer shall not be required to reduce its Mill Load below the Mill Essential Services Load but shall deliver Capacity Assistance for the excess.
 - (k) “Interruptible Demand” means the same as it does under the Service Agreement.
 - (l) “Mill Essential Services Load” means that amount of Mill Load required to operate the Customer’s main power boiler and essential heating and lighting but in any event shall not exceed 10 MW.
 - (m) “Mill Load” means the Customer’s 60 Hz electrical power requirements as taken at its 66 kV supply buses, or at such other points agreed to in writing by the parties.
 - (n) “Secondary Energy” means the same as it did under an Agreement between the successors to the parties hereto, dated May 13, 1977 and amended June 3, 1988,.
 - (o) “Winter Period” means the period from November 1 to April 30 inclusive.
- 1.02 This Agreement amends, restates and replaces the Amended and Restated Capacity Assistance Agreement which shall cease to have effect as of the date of execution of this Agreement.

ARTICLE 2
CAPACITY ASSISTANCE

- 2.01 Hydro may make Capacity Assistance Requests to the Customer in amounts of 20, 40, 60, 90 or 105 MW, or other amount as confirmed in a test pursuant to Clause 2.07 hereof, no more than twice in a calendar day, no more than sixty times in a Winter Period, each of a duration of not less than 4 hours and not more than six (6) hours, and such that the total duration of such Capacity Assistance Periods does not exceed 250 hours in a Winter Period.
- 2.02 A Capacity Assistance Request shall be made to the Customer upon not less than 10 minutes notice prior to the time that the Capacity Assistance Period is scheduled to commence. Any request to cease a Capacity Assistance Period, or to change the amount of Mill Load reduced during a Capacity Assistance Period, shall be made upon 10 minutes notice but a change in the level of Capacity Assistance provided in a Capacity Assistance Period does not i) constitute a new Capacity Assistance Request; or ii) disentitle the Customer to payment under Clause 3.02 hereof for the period in the initial Capacity Assistance Request.
- 2.03 Any Capacity Assistance Request made by Hydro may be cancelled by Hydro if notice to cancel that Capacity Assistance is given by Hydro to the Customer not less than 10 minutes before the time that the Capacity Assistance Period was scheduled to commence.
- 2.04 Hydro shall have the sole and absolute discretion to decide the loading of its gas turbine generators. Hydro shall include any Capacity Assistance offered by Customer pursuant to this Agreement in the generating unit dispatch guidelines to be followed by Hydro in order to maintain sufficient spinning reserve, maintain the reliability of the island transmission system and minimize service impacts to customers.

- 2.05 Hydro may request from Customer and Customer may provide Extended Duration Capacity Assistance in amounts of 40 MW or 50 MW no more than ten times in a Winter Period, each of a duration of not more than 72 hours. A request for Extended Duration Capacity Assistance shall be made to the Customer upon not less than 12 hour notice prior to the time that the Extended Duration Capacity Assistance period is scheduled to commence and may only be made on or after the 5th day following the end of the previous Extended Duration Capacity Assistance period. Provided that the request for Extended Duration Capacity Assistance is made to the Customer upon not less than two weeks notice prior to the time that the Extended Duration Capacity Assistance is scheduled to commence and that there is no request for Extended Duration Capacity Assistance during such 2-week notice period, the duration of such Extended Duration Capacity Assistance may be up to two weeks. Extended Duration Capacity Assistance requests by Hydro shall be voluntary at Customer's discretion.

Periods of Extended Duration Capacity Assistance shall not count towards the total duration of Capacity Assistance of 250 hours nor sixty times in a Winter Period as per Clause 2.01 hereof. For Extended Duration Capacity Assistance, Hydro shall pay Customer the rate set out in Clause 3.03 hereof.

- 2.06 Hydro may make a Capacity Assistance Request or a request for Extended Duration Capacity Assistance outside of a Winter Period and Customer compliance with such a request is voluntary at Customer's discretion. For Capacity Assistance Requests outside of a Winter Period, Hydro shall pay Customer the rate set out in Clause 3.03 hereof.
- 2.07 The Customer must demonstrate the capability to reduce its load pursuant to a request of Hydro such that it provides up to 105 MW of relief on the island transmission system. A test will be carried out at a mutually agreed time between October 15 and October 31 before each Winter Period. If a level of Capacity Assistance of 105 MW is not sustained for a continuous period of 1 hour in the test, the Customer will be provided an opportunity to repeat the test at another mutually agreed time. If the level of Capacity Assistance is not sustained in the second test, the Capacity Fee will be reduced to reflect the prorated amount of Capacity Assistance which the Customer has demonstrated it can sustain. No payment shall be made under this agreement for Capacity Assistance tests carried out under this Clause 2.07.

ARTICLE 3 **PAYMENT**

- 3.01 Subject to Article 4, Hydro shall pay the Capacity Fee whether or not Hydro makes any Capacity Assistance Request, fifty percent (50%) of which shall be billed at the end of January and the balance at the end of April in each Winter Period that this agreement is in effect.
- 3.02 In addition to the fees payable under Clause 3.01, Hydro shall pay the Customer a variable rate fee for the maximum Capacity Assistance requested and provided during each Capacity Assistance Period.

For Capacity Assistance up to and including 90 MW, the variable rate fee is based on the greater of (i) the applicable percentage of the previous month's GTVC (as determined below), or (ii) a predetermined rate of \$0.20/KWh, but which shall not exceed \$0.26/KWh. The applicable percentage of the previous month's GTVC shall be determined on a sliding scale based on the maximum Capacity Assistance at such time for the Winter Period, as follows:

- i) 0 to 7.5 GWh/Winter Period – 90% of GTVC;
- ii) Greater than 7.5 GWh/Winter Period – 80% of GTVC.

For Capacity Assistance over 90MW, the variable rate fee is based on the greater of (i) the applicable percentage of the previous month's GTVC (as determined below) plus \$0.06/KWh, or (ii) a predetermined rate of \$0.26/KWh, but which shall not exceed \$0.32/KWh. The applicable percentage of the previous month's GTVC shall be determined on a sliding scale based on the maximum Capacity Assistance at such time for the Winter Period, as follows:

- i) 0 to 7.5 GWh/Winter Period – 90% of GTVC;
- ii) Greater than 7.5 GWh/Winter Period – 80% of GTVC.

- 3.03 In addition to the fees payable under Clause 3.01, for periods of Extended Duration Capacity Assistance or for any Capacity Assistance outside of a Winter Period, Hydro shall pay the Customer a variable rate fee for the maximum Capacity Assistance requested and provided during each Capacity Assistance Period.

For Capacity Assistance up to and including 90 MW, the variable rate fee is based on the greater of (i) 80% of the previous month's GTVC, or (ii) a predetermined rate of \$0.20/KWh, but which shall not exceed \$0.26/KWh.

For Capacity Assistance over 90MW, the variable rate fee is based on the greater of (i) 80% of the previous month's GTVC plus \$0.06/kWh, or (ii) a predetermined rate of \$0.26/KWh, but which shall not exceed \$0.32/KWh.

- 3.04 The amounts paid for any Capacity Assistance shall be the only amounts payable and no amounts shall be payable under the Secondary Energy arrangements that exist under separate agreements with respect to Capacity Assistance provided during a Capacity Assistance Period under this Agreement but otherwise the Secondary Energy arrangements will apply.
- 3.05 The Customer shall render its accounts two times each Winter Period, once at the end of January and once at the end of April, and Hydro will, within twenty (20) days after the date of receiving such account, make payment in lawful money of Canada at the appointed office of the Customer or by means of direct deposit into a Canadian bank account of the Customer. Any amounts in arrears or overdue to the Customer after expiration of such twenty (20) days shall bear interest, before and after judgment, at the prime rate of the Bank of Montreal plus 2% annually until such balance is paid. The prime rate of the Bank of Montreal is the annual rate so established and announced by such bank at its head office in Canada as an annual rate of interest for demand loans payable in Canadian Dollars in Canada.

ARTICLE 4
CAPACITY FEE ADJUSTMENTS AND FORCE MAJEURE

- 4.01 Subject to Clauses 4.03 and 4.04, in the event that Hydro makes a Capacity Assistance Request and the Customer fails to provide the Capacity Assistance, the Capacity Fee, after adjustments, if any, pursuant to Clause 4.03, will be reduced by 50% as a result of the first failure to provide Capacity Assistance as requested during a Winter Period. For each additional failure to provide Capacity Assistance, the Capacity Fee will be reduced by a further 25%. If the Customer fails to provide Capacity Assistance three times during a Winter Period, the Customer forfeits 100% of the Capacity Fee.
- 4.02 When there is an Agreement to Transact confirmed under the Surplus Firm PPA and the transaction occurs during the Winter Period as defined in this Second Amended and Restated Capacity Assistance Agreement, the calculation of the Capacity Fee will be reduced on a pro rata basis by the confirmed capacity and the duration of the Agreement to Transact.
- 4.03 If Hydro has given a Capacity Assistance Request at a time when the Customer is experiencing an Ice Condition Event, then there will be no reduction made to the Capacity Fee pursuant to Clause 4.01, however, at the end of the Winter Period, an adjustment shall be made to the Capacity Fee paid or payable for that Winter Period so that, in result, the total amount of the Capacity Fees shall be reduced by \$149,625 (1/30 of \$2,992,500) for each Ice Condition Event. The Customer shall use all reasonable efforts to remedy the Ice Condition Event as quickly as possible and shall resume compliance with its obligations hereunder as soon as reasonably possible upon termination of the Ice Condition Event. The Customer shall notify Hydro's Energy Control Centre when it is experiencing an Ice Condition Event that may impact its ability to fulfill its obligation under this Agreement. The Customer shall also notify Hydro's Energy Control Centre when the Ice Condition Event has cleared.
- 4.04 A party shall not be liable for failure to comply with its obligations hereunder due to an act of God or event of Force Majeure. The party affected by Force Majeure shall promptly give written notice to the other party of the event of Force Majeure, stating therein the nature of the event, the obligations affected, the reasons and expected duration of any suspension of performance and the anticipated date of termination of the event of Force Majeure. The affected party shall use all commercially reasonable efforts to remedy the event of Force Majeure as quickly as possible, including not exceeding Mill Essential Services Load, and shall resume compliance with its obligations hereunder as soon as reasonably possible upon termination of the event of Force Majeure.

ARTICLE 5
TERM OF AGREEMENT

5.01 This agreement commences as of the date of execution, subsequent to the receipt of approval of the Board of Commissioners of Public Utilities, and expires on April 30, 2023.

5.02 Notwithstanding Clause 5.01, either party may terminate this Agreement if:

- i) the other party has failed to pay any amount due pursuant to this Agreement, or
- ii) the other party is in material default of any provision of this Agreement (other than a payment default) for a period of [30] days,

and in both cases such defaulting party fails to remedy such default within thirty (30) days after receipt of written notice thereof from the other Party.

***IN WITNESS WHEREOF**, each Party has executed this Agreement by its duly authorized representatives.*

Corner Brook Pulp and Paper Limited

Newfoundland and Labrador Hydro

Per: _____

Per: _____

Title: _____

Title: _____