

AGREEMENT

FOR

PROFESSIONAL SERVICES

TO REVIEW AND REPORT ON

TWO GENERATION EXPANSION ALTERNATIVES

ISLAND OF NEWFOUNDLAND

INTERCONNECTED ELECTRICAL SYSTEM

BETWEEN

NEWFOUNDLAND AND LABRADOR

BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

AND

MANITOBA HYDRO INTERNATIONAL LTD.

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THIS AGREEMENT made at St. John's in the Province of Newfoundland and Labrador as of the 4th day of July A.D. 2011.

BETWEEN **NEWFOUNDLAND AND LABRADOR BOARD OF COMMISSIONERS OF PUBLIC UTILITIES**, (hereinafter referred to as the "Board") of the first part

AND **MANITOBA HYDRO INTERNATIONAL LTD.**, a body incorporated under the laws of Canada (Corporation Number 450702-9) and having its head office in the City of Winnipeg, in the Province of Manitoba, business address 211 Commerce Drive, Winnipeg, Manitoba, Canada, R3P 1A3 (hereinafter referred to as the "Consultant") of the second part

WHEREAS The Lieutenant-Governor in Council of the Province of Newfoundland and Labrador has made a Reference to the Board (hereinafter referred to as the "Reference") directing the Board to review and report to Government on whether the Projects (hereinafter defined) represent the least-cost option for the supply of power to Island Interconnected Customers over the period of 2011-2067, as compared to the Isolated Island Option (hereinafter defined);

AND WHEREAS the Board was further directed to consider and evaluate factors it considers relevant including forecasts and assumptions for the Island load, system planning assumptions, and the processes for developing and comparing the estimated costs for the supply of power to Island Interconnected Customers;

AND WHEREAS the Board has decided to retain the Consultant to perform the Services on the terms and conditions hereinafter set out to assist the Board in undertaking the Reference;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the covenants, agreements, terms, conditions and payments hereinafter set forth, the parties hereto hereby respectively covenant and agree as follows:

1. DEFINITIONS

Unless the context otherwise requires, the following definitions shall apply to this Agreement.

1.1. **Contract** shall mean this Agreement and includes:

- (i) Proposal; and
- (ii) RFP

In case of conflict, the said documents are listed in order of precedence, unless otherwise provided.

- 1.2 **Consultant** shall mean those persons or companies who executed the Contract with the Board for the performance of the Services provided for in the Contract.
- 1.3 **Isolated Island Option** shall mean the isolated Island of Newfoundland generation development, the components of which are set out in Clause 2.2 of the RFP.
- 1.4 **Projects** shall mean the development of the Muskrat Falls generation facility and the Labrador Island Link transmission line, the components of which are set out in Clause 2.2. of the RFP.
- 1.5 **Proposal** shall mean the proposal submitted by the Consultant dated June 26, 2011.
- 1.6 **RFP** shall mean the Request for Proposals for Professional Services to Review and Report on Two Generation Expansion Alternatives - Island Interconnected Electrical System (RFP 2011-001) issued June 13, 2011.
- 1.7 **Services** means those Services to be provided as stated in Article 3, SCOPE OF SERVICES.

2. INTERPRETATION

- 2.1 The doctrine of contra proferentem shall not apply in the interpretation of this document meaning that if there is any ambiguous language in this document it shall not be interpreted more strongly against the party who prepared or drafted the ambiguous language.
- 2.2 The words “include”, “includes” and “including” as used in the Contract are not to be construed as words of limitation.
- 2.3 Article headings are inserted herein for convenience of reference only and shall not form a part hereof for purposes of interpretation.
- 2.4 In the Contract all references to dollar amounts and all references to any other money amounts are expressed in terms of currency of Canada.
- 2.5 Wherever in the Contract a number of days is prescribed for any purpose, unless otherwise specified, the days shall be calendar days and shall be reckoned exclusively of the first and inclusively of the last.
- 2.6 The rights and recourse of the Board and the Consultant contained in the Contract are cumulative and not in the alternative unless otherwise provided. The exercise of any such rights or recourse shall not constitute a waiver or renunciation of any other rights or recourse.

3. SCOPE OF SERVICES

3.1 Board's Objective

The Board's objective is to complete the review required by the Reference within the schedule as defined in Clause 3.5.

3.2 Services

The Consultant is an independent contractor and not an agent or employee of the Board.

The Consultant acknowledges that the Board is relying on the skill and knowledge of the Consultant in performing the Services. The Consultant shall exercise the degree of skill, care and diligence required by customarily accepted practices and procedures normally provided in performance of services similar to the Services required under the Contract.

The Consultant shall only use key personnel to perform the Services who have been named by the Consultant in the Proposal and who have been accepted by the Board. The Consultant may only substitute or replace the accepted key personnel with the prior written agreement of the Board.

The Services which the Consultant shall perform or cause to be performed with diligence, skill and care include the following:

- (a) A review of all previous work performed by consultants and others related to the Projects and the Isolated Island Option which are necessary for the Consultant to perform the Services. The level of review shall be sufficient for the Consultant to report on whether the work was performed with the degree of skill, care and diligence required by customarily accepted professional practices and procedures normally completed in the performance of similar work.
- (b) A comprehensive review of the Cumulative Present Worth (CPW) analysis of the Projects and the Isolated Island Option to enable the Board to identify the least-cost alternative.
- (c) Preparation of a final report which will include, as a minimum the following:
 - an executive summary;
 - a description of the Consultant's review team;
 - a description of the methodology used to complete the Services;
 - a summary of the results of the review, including significant data gaps and issues, if any.

- (d) Provision of ongoing support to the Board in the preparation of its report to the Government of Newfoundland and Labrador. Such support may include the following:
- Attendance at a technical conference where third parties and their experts will have the opportunity to ask questions and raise issues related to the Consultant's report.
 - Attendance at public consultations in the Province.

The Consultant's senior representative(s), or designate(s), approved by the Board, may be required to make presentations and give evidence at public consultations and the technical conference.

- 3.3 In the performance of the Services, the Consultant shall at all times:
- a) be subject to the direction of the Board; and
 - b) be the agent of the Board in dealing with third parties in relation to the performance of the Services;
- 3.4 Nothing in this Contract shall be construed as limiting the right of the Board to employ directly other advisors, experts, consultants, agents and specialists to provide the Board with independent advice in relation to any part of the Reference or the Services.
- 3.5 Time is of the essence. The Consultant shall perform the Services requested herein in accordance with the following schedule:

Schedule

<u>Event</u>	<u>Scheduled Completion Date</u>
Submission of final report	September 15, 2011
Completion of Services	December 30, 2011

Where, after consultation with the Consultant, the Board decides that the rate of progress of the Services is insufficient to enable the Services to be completed in the manner specified in the Contract and within the agreed schedule, the Consultant shall take whatever steps that the Board requires, in writing, to expedite the progress of the Services to meet the completion dates and schedule in the Contract.

- 3.6 The Consultant shall prepare brief bi-weekly written reports which shall generally address the following and any other subjects related to the performance of the Services:
- (a) a review of the status of the technical and economic aspects of the Services;
 - (b) a review of the Consultant's personnel involved in the performance of the Services;
and

(c) any expected changes to the total forecast-final-cost of performance of the Services.

3.7 Without restricting the generality of the foregoing, the Consultant may, with the prior written approval of the Board, subcontract portions of the Services.

3.8 The Consultant warrants that it shall perform the Services in accordance with the standard of care, skill and diligence appropriate at the time of performance expected of recognized professional firms performing services of a similar type and nature. The Consultant shall, at no additional cost to the Board, re-perform those Services which fail to meet such standard.

4. REMUNERATION

4.1 The Board shall pay the Consultant for the Services a total remuneration consisting of payment for hours worked and reimbursable (out of pocket) costs, all in accordance with this Article. Harmonized Sales Tax (HST), where applicable, shall be paid in addition to such remuneration.

4.2 HOURLY COSTS

The Consultant shall be reimbursed by the Board for the time spent by the Consultant's personnel in connection with the performance of the Services at the hourly rates indicated in Section 6.3 of Consultant's Proposal, which are deemed to include components for salary, employee benefits, general overhead costs and profit for all Services.

4.3 REIMBURSABLE COSTS

All reasonable out-of-pocket expenses incurred by the Consultant in performance of the Services will be reimbursed by the Board at cost, together with any administration fee, if applicable, and shall include such items as travel by the most economical means, and accommodations, long distance communications, and document reproduction costs. The Consultant's estimated out-of-pocket costs are as indicated in Section 6.2 and Section 6.4 of Consultant's Proposal.

5. CHANGES AND EXTRA WORK

5.1 The Board shall have the right to require:

(a) changes in the Services and in the work performed by the Consultant;

(b) extra work or Services to be performed by the Consultant in addition to the said Services;

(c) a reduction in the Services;

or

(d) any combination of the things referred to in paragraphs (a), (b) or (c).

5.2 If, at any time, the Board requires changes or extra work to be made in the scope of the Services, the Consultant shall prepare and furnish to the Board, for its approval, a written estimate of the increase or decrease in the cost of Services, or in the time of completion of the Services, if such changes were to be effected, all in accordance with procedures approved by the Board. Rates shall not exceed those provided for in Clause 4.2, and where such changes or extra work involve staff classifications not provided in Clause 4.2 such classification rates shall be mutually agreed and calculated in a similar manner as existing classifications. If the Board then desires to have the changes or extra work effected by the Consultant, it shall notify the Consultant thereof in writing and the Consultant shall thereupon revise the applicable Services cost estimates.

6. DELAY

6.1 Where the Consultant is aware of an event or any circumstances which are delaying or are expecting to delay the performance of the Services, the Consultant shall give written notice to the Board of the particulars of the cause and the expected length of the delay and the steps that the Consultant intends to take to mitigate the effects of the delay.

6.2 The written notice shall be given as soon as possible and in any event not later than seven (7) days after the Consultant becomes aware or ought reasonably to have become aware of the commencement of the event or circumstances causing the delay.

6.3 The Consultant shall make every reasonable effort to mitigate the effects of or overcome any delay of the Services.

7. MANNER AND TIME OF PAYMENT

7.1 As soon as practicable after the end of each calendar month, and in any case not later than the twentieth day of the following calendar month, the Consultant shall submit to the Board an invoice for the remuneration due for the Services rendered during the previous calendar month, including the expenditures actually incurred and paid in accordance with the provisions of the Contract during that month and being reimbursable costs, prepared in accordance with Article 4, REMUNERATION in such form and supported by such time sheets, receipted supplier invoices and such proof of expenditures, as the Board shall require.

7.2 Within thirty (30) calendar days after receipt of such invoice, the Board shall, after any appropriate adjustments and subject always to possible further verification and correction, pay the Consultant for such monthly invoices.

7.3 The acceptance by the Consultant of the final payment under the Contract shall operate as, and shall be, a release to the Board and its agents from any and all claims of and liability to the Consultant for anything done or furnished for, or in relation to, the

Contract, or for any act of neglect or omission of the Board and its agents relating to or affecting the Contract or the Services, except claims that have been identified and remain unsettled.

8. RECORDS AND ACCOUNTS OF REIMBURSABLE COSTS

The Consultant shall keep records and accounts showing all expenditures of whatever nature constituting reimbursable costs. The Consultant's records shall be kept in accordance with generally accepted Canadian accounting principles and practices consistently applied.

9. TERMINATION

The Board shall have the right, in its sole discretion, upon seven (7) days written notice to the Consultant to terminate the Contract in whole or in part without being subject to a claim for damages for such termination. The Consultant will be paid for work performed plus applicable expenses judged necessary by the Board.

10. OWNERSHIP OF DRAWINGS AND PROPERTY ACQUIRED FOR THE SERVICES

10.1 All reports, drawings, calculations, work sheets, and like documents, including software and intellectual property, prepared or caused to be prepared by the Consultant in connection with the Services shall become the property of the Board.

10.2 All information, procedures, processes, reports, data and like documents provided by the Board to the Consultant shall remain the property of the Board and returned to the Board upon completion of the Services.

11. COMPLIANCE WITH LAWS

The Consultant shall use due diligence, skill and care to observe and abide by and keep itself fully informed of all applicable laws, rules and regulations of any country, state, province and municipality where the Services are performed and the laws, rules and regulations of authorities acting thereunder in connection with the performance of the Services. The Services performed by the Consultant shall be in compliance with all applicable laws in effect or which may become effective prior to completion of the Contract.

12. INSURANCE

The Consultant shall carry professional errors and omissions liability insurance in an amount not less than one million (\$1,000,000) dollars and shall ensure that each consultant who has a professional liability exposure and who is engaged by the Consultant in the performance of the Services is covered against professional errors and omissions in an amount not less than one million (\$1,000,000) dollars. Such insurance shall be in effect for at least twelve (12) months following completion of the Services.

13. WORKERS' COMPENSATION

The Consultant shall pay all assessments due under the relevant Workers' Compensation legislation. Prior to commencing Services, the Consultant shall obtain and deliver to the Board a certificate or certificates establishing that it is in good standing with the Workplace Health, Safety and Compensation Commission of Newfoundland and Labrador and with the comparable board or commission of any other province having jurisdiction in connection with the Consultant's performance of the Services.

14. NOTICES

14.1 Any written notice provided for herein to be given to one party by the other party shall be deemed properly given and received if:

- (a) delivered by hand to the receiving party's designated representative; or
- (b) either:
 - (i) being mailed by prepaid registered mail; or
 - (ii) transmitted by electronic methods;

to the receiving party's address as either stated in this Article or as changed through written notice to the other party.

14.2 Any notice which is sent by prepaid registered mail or transmitted by electronic methods shall be deemed to be given and received forty-eight (48) hours after mailing or transmission, as applicable; provided that if such time expires on a Saturday, Sunday or legal holiday, the notice shall be deemed to be given and received on the next normal business day.

14.3 Addresses of parties are:

Board:

Newfoundland and Labrador Board of Commissioners of Public Utilities
120 Torbay Road
P. O. Box 21040
St. John's, NL
A1A 5B2

Attention: Ms. Cheryl Blundon
Director of Corporate Services & Board Secretary
E-mail: ito@pub.nl.ca
Fax: (709) 726-9604

Consultant:

Manitoba Hydro International Ltd.
211 Commerce Drive
Winnipeg, MB
R3P 1A3

Attention: Mr. Paul Wilson
Managing Director, Subsidiary Operations
E-mail: plwilson@mhi.ca
Fax: (204) 465-7745

or to such other address as either of the parties shall designate by written notice given as herein required.

15. ASSIGNMENT

Neither of the parties hereto shall assign the Contract or any part thereof or any interest herein without the prior written approval of the other parties hereto, which approval shall not be unreasonably withheld.

16. GOVERNING LAW AND FORUM

The Contract shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and every action or other proceeding arising hereunder shall be determined exclusively by a court of competent jurisdiction in the Province of Newfoundland and Labrador, subject to the right of appeal up to the Supreme Court of Canada where such appeal lies.

17. EFFECTIVE DATE OF CONTRACT

This Contract shall have effect on July 4, 2011.

18. NO WAIVER

None of the provisions of the Contract shall be considered waived by the Consultant or the Board except when such waiver is given in writing. No such waiver shall be or shall be construed to be, a waiver of any past or future default, breach or modification of any of the terms, provisions, conditions or covenants of the Contract except as expressly stipulated in such waiver.

19. SUCCESSORS AND ASSIGNS

The Contract shall enure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto.

20. DUTY OF CARE

The Consultant agrees to use reasonable care, skill, competence and judgment in the performance of the Services hereunder which are generally consistent with professional standards for individuals providing similar service at the same time, in the same locals, and under like circumstances.

21. INDEMNITY

In no event shall the Board be liable for any bodily injury, death or property damage to the Consultant, its employees or agents or for any claim, demand or action by any third party against the Consultant, its employees, servants, officers, directors, managers, shareholders, agents, successors or assigns arising out of or in any way related to this engagement and the Consultant shall at all times indemnify, save and keep harmless the Board, its employees, servants, officers, directors, managers, shareholders, agents, successors or assigns from and against all suits, judgments, claims, demands and losses (including, without limitations, reasonable legal expenses).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under their respective Corporate Seals as of the day and year first above written.

Signed and sealed in the presence of: **Board of Commissioners of Public Utilities**

BY:

Andy Wells

Chairperson & Chief Executive Officer

AND:

Darlene Whalen, P.Eng.

Vice-Chairperson

Signed and sealed in the presence of: **Manitoba Hydro International Ltd.**

BY:

Paul Wilson, P.Eng.

Managing Director, Subsidiary Operations

AND:

George Derwin

Legal Counsel