

NON-DISCLOSURE AGREEMENT

This Agreement made as of the 18 day of January, 2016.

BETWEEN: **ERNST & YOUNG LLP**, a limited liability partnership organized and existing under the laws of Ontario and having its office in the Province of Newfoundland and Labrador.

(hereinafter referred to as "E&Y")

AND: **NALCOR ENERGY**, a body corporate existing pursuant to the *Energy Corporation Act* being Chapter E-11.01 of the Statutes of Newfoundland and Labrador, 2007,

(hereinafter referred to as "Nalcor"),

(Hereinafter referred to individually as a "Party" and collectively as the "Parties")

WHEREAS E&Y is providing consulting services to the Government of Newfoundland and Labrador (hereinafter the "Client") in relation to Nalcor's Muskrat Falls project, (hereinafter referred to as the "Authorized Purpose");

AND WHEREAS as part of the Statement of Work for the Authorized Purpose, it is understood that the information to be provided by Nalcor and/or its Affiliates to E&Y in connection with the Authorized Purpose will be confidential or commercially sensitive and shall not be disclosed to the public or to any third party and the Parties desire to protect the confidentiality of the information that may be included in such exchange;

AND WHEREAS Nalcor and/or its Affiliates may provide or disclose information in various forms and formats relating to the Authorized Purpose and certain information may be non-public, confidential or proprietary in nature and the confidentiality of which the Parties desire to protect;

NOW THEREFORE THIS INDENTURE WITNESSETH THAT for and in consideration of the premises and mutual obligations contained herein and for other good and valuable consideration (the receipt, adequacy and sufficiency of which are hereby acknowledged), the Parties intending to be legally bound hereby agree as follows:

1. DEFINITIONS

For the purposes of this Agreement:

- (a) "Affiliate" means any Person that directly or indirectly through one or more intermediaries, Controls or is Controlled by, or is under common Control with, a Party and in the case of E&Y, includes other members of the global network of Ernst & Young firms.

- (b) "Agreement" means this Agreement as amended and supplemented from time to time.
- (c) "Confidential Information" means any and all oral, written, electronic, magnetic or optical data and machine-readable information and data and any accompanying support materials and documentation provided or disclosed directly or indirectly by Nalcor to E&Y or its Representatives in association with the Authorized Purpose. Such confidential information may include but not be limited to any technical and geographical data, maps, drawings, data, surveys, memoranda, notes, reports, files, copies, extracts, inventions, discoveries, improvements, financial and market information, limitation research, developmental, engineering, manufacturing, sales, operating, performance, cost, business and process information or data, computer programming and other software and software techniques, environmental reports, evaluations, legal opinions, names of shareholders, partners or joint venture partners, business arrangements together with all associated analyses, compilations, studies or other documents prepared by E&Y or its Representatives with respect to confidential information provided by Nalcor or its Representatives. Ownership and title of Confidential Information of Nalcor and/or its Affiliates shall at all times remain exclusively vested in Nalcor.
- (d) "Control" means, in the context of a relationship between two (2) or more Persons, control in any manner that results in control in fact, whether through direct or indirect ownership or control of fifty percent (50%) or more of voting shares, interests or trusts, representation on the board of directors or other governing body, or otherwise.
- (e) "Person" is to be interpreted broadly and includes, without limitation (i) any individual or group, and any firm, corporation, company, association, partnership, joint venture, trust, unincorporated organization, a state or political subdivision thereof, a government and every agency or instrumentality thereof or any other legal entity, and (ii) the media.
- (f) "Representatives" of a Party means shareholders, partners, directors, officers and employees of a Party or its Affiliate, as well as representatives, consultants, agents and financial, tax, legal and other advisors, engaged or retained by or assisting such Party in any way in connection with the Authorized Purpose.

2. CONFIDENTIALITY AND RESTRICTED USE

- 2.1 Nalcor agrees, subject to the terms and conditions of this Agreement, to disclose to E&Y certain Confidential Information. Nalcor shall have full discretion in determining what Confidential Information may be disclosed to E&Y hereunder.
- 2.2 Subject to the terms and conditions of this Agreement, E&Y shall not use the Confidential Information furnished to it or its Representatives by Nalcor and/or its Affiliates for any purpose other than for the Authorized Purpose and shall exercise due care and attention to maintain the confidentiality and secrecy of the Confidential Information.

- 2.3 E&Y shall ensure that only those Representatives who need to have access to the Confidential Information shall have access to such Confidential Information and in such cases the Confidential Information shall only be used for the Authorized Purpose.
- 2.4 E&Y shall not disclose the Confidential Information to any third party, directly or indirectly, without the prior written consent of Nalcor, except as provided in Clause 2.5 and Article 3 hereof.
- 2.5 E&Y may disclose Confidential Information to the Client and to its Representatives who need to know such Confidential Information for the Authorized Purpose, subject to the foregoing requirements. Prior to such disclosure (a) the Client and each such Representative shall be informed by E&Y of the confidential nature of such Confidential Information, and (b) E&Y shall request or direct, and the Representative shall agree, before receipt of such Confidential Information, to treat such Confidential Information in accordance with the terms and conditions of this Agreement as if it is a party hereto.
- 2.6 E&Y shall return and deliver, or cause to be returned and delivered, to Nalcor, or destroy and certify such destruction of Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of E&Y, the Client or its Representatives relating to the Confidential Information of Nalcor and/or its Affiliates within thirty (30) days of a written request by Nalcor. Notwithstanding the foregoing, E&Y may retain such information to the extent required by professional obligations including without limitation, the Rules of Professional Conduct promulgated by the Chartered Professional Accountants of Newfoundland and Labrador.
- 2.7 The Parties confirm and agree that the provisions of this Agreement shall remain in full force and effect with respect to the disclosure of any Confidential Information and all Confidential Information shall remain confidential and subject to this Agreement for the term set out in Clause 3.3 of this Agreement. Either Party may terminate the provision of Confidential Information hereunder upon providing the other Party with thirty (30) days written notice. Such termination, however, shall not affect the period during which a Party shall maintain Confidential Information in accordance with the terms of this Agreement and in particular Clause 3.3.

3. USE OF AND AUTHORIZED DISCLOSURE OF INFORMATION

- 3.1 E&Y acknowledges and agrees with Nalcor that:
- (a) The Confidential Information is provided to the E&Y for the Authorized Purpose.
 - (b) Nalcor, its Affiliates and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information and that E&Y shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information.

- (c) Nalcor, its Affiliates and its Representatives and their respective directors, officers, employees or agents shall not have any liability to E&Y, its Representatives or the Client resulting from any use or reliance upon the Confidential Information or other Nalcor information by E&Y, its Representatives or the Client.
 - (d) No license under any trademark, patent, or other intellectual property right, is either granted or implied by the conveying of Confidential Information or other Nalcor information to E&Y.
- 3.2 Notwithstanding the foregoing, the obligations of restricted use and strict confidentiality set forth in this Agreement shall not extend to any Confidential Information or other Nalcor information which:
- (a) E&Y can clearly establish was known by it or its Representatives prior to the disclosure thereof pursuant to this Agreement;
 - (b) is independently acquired or developed by E&Y or its Representatives without reference to the Confidential Information or other Nalcor information and without violating any obligations hereunder;
 - (c) is legally in possession of E&Y or its Representatives prior to receipt thereof from Nalcor pursuant to this Agreement;
 - (d) enters the public domain through no fault of E&Y or its Representatives;
 - (e) is disclosed to E&Y or its Representatives without restriction and without breach of this Agreement or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure;
 - (f) is approved in writing for release by Nalcor; or
 - (g) E&Y or its Representatives are legally required by law or by a governmental or court decree, order, regulation or rule or by any legal process to disclose, whereby E&Y will immediately provide notice to the Nalcor of such a requirement so that E&Y may seek an appropriate protective order and reasonably assist Nalcor, if required, in defending against disclosure of the Confidential Information.
- 3.3 Any disclosure of Confidential Information pursuant to a legal or regulatory obligation to make such disclosure shall not be a breach of this Agreement.
- 3.4 The Parties confirm and agree that the provisions of this Agreement shall remain in full force and effect for a period of ten (10) years from the Effective Date of this Agreement with respect to any Confidential Information notwithstanding that this Agreement may be terminated or that the Confidential Information disclosed to E&Y may have been returned or copies thereof destroyed prior to the expiration of the aforesaid time period
- 3.5 E&Y agrees that Nalcor will be irreparably damaged if any provision of this Agreement

is not performed by E&Y, its Representatives or the Client in accordance with its terms and that monetary damages may not be sufficient to remedy any breach by E&Y, its Representatives or the Client of any term or provision of this Agreement and E&Y further agrees that Nalcor shall be entitled to seek equitable relief, including injunctive and specific performance, in the event of any breach hereof and in addition to any other remedy available at law or in equity.

4. NOTICES

- 4.1 All notices, requests, demands, consents, waivers and other communications given hereunder shall be in writing, marked "Private and Confidential", and shall be deemed to have been duly given if delivered by hand or by sending same by facsimile communication or other similar form of communication to the following addresses:

If to E&Y to:

David Steele
Ernst & YoungLLP
5 Springdale St., Suite 800
St. John's, Newfoundland and Labrador
A1E 0E4

Attention: David Steele
Facsimile: (709) 726-0345

If to Nalcor Energy, to:

Nalcor Energy
Hydro Place
500 Columbus Drive, P.O. Box 12800
St. John's, Newfoundland and Labrador
A1B 0C9

Attention: Corporate Secretary
Facsimile: (709) 737-1782

Any such notice, request, consent, demand, waiver or other communication shall: (i) if delivered, be deemed to have been given or made at the time of delivery; and (ii) if sent by fax or other similar form of written communication, be deemed to have been given or made at the time in which it was successfully transmitted as evidenced by automatic confirmation of receipt.

6. ENTIRE AGREEMENT

- 6.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and any and all previous representations with respect to such subject matter, either oral or written, are hereby annulled and superseded.

7. SEVERABILITY

- 7.1 The Parties acknowledge and agree that the restrictions contained in this Agreement are both reasonable and necessary to protect the commercial interests of Nalcor and its Affiliates. Accordingly, if any provision of this Agreement is held to be invalid or unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provision or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect, and the Parties shall use their reasonable, good faith efforts to achieve the purpose of the invalid or unenforceable provision or part thereof by a new valid and enforceable stipulation.

8. WAIVER AND AMENDMENTS

- 8.1 It is understood and agreed that a failure or delay by any Party in exercising any right, power or privilege hereunder will not operate as a waiver thereof, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder; and
- 8.2 This Agreement may be amended or modified only by an instrument in writing signed by authorized representatives of both Parties to this Agreement.

9. ASSIGNMENT

- 9.1 It is agreed that neither this Agreement nor any of the rights or obligations of the Parties under this Agreement may be assigned, in whole or in part, by any Party without the prior written consent of the other Party.

10. GOVERNING LAW

- 10.1 This Agreement shall be governed by and interpreted according to the laws of the Province of Newfoundland and Labrador and all actions, suits, and proceedings arising out of this Agreement shall be determined in a court of competent jurisdiction in the Province of Newfoundland and Labrador, subject to any right of appeal to the Supreme Court of Canada.

11. COUNTERPARTS AND FACSIMILE EXECUTION

- 11.1 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile and the Parties shall recognize such execution and the valid and binding execution hereof.

12. GENERAL

12.1 The Parties acknowledge to one another that each respectively intends to perform its obligations as specified in this Agreement in good faith.

12.2 In this Agreement the use of the singular number includes the plural and vice versa.

12.3 Captions or descriptive words at the commencement of the various sections are inserted only for convenience and are in no way to be construed as a part of this Agreement or as a limitation upon the scope of the particular section to which they refer.

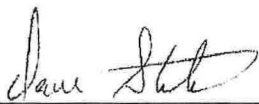
13. LANGUAGE OF AGREEMENT

13.1 Documentation, required submittals and all other communications, whether verbal or written, shall be in English.

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

ERNST & YOUNG LLP

NALCOR ENERGY

Per: 

Per: 

Title: Partner

Title: Vice President - LCP