

# SAMPLE DRAFT



## Cooperation Agreement Between and Among [Aggregate Group Name]

This Cooperation Agreement (“**Agreement**”) is entered into as of [Month] [Day], [Year] (the “**Effective Date**”) by and between [Aggregate Group Name]. The parties hereto are referred to herein individually as a “**Member**” and together as the “**Members**.”

### WHEREAS

- A. The Green Choice Program (“**GCP**”) enacted under the Electricity Act, SNS. 2004, c. 25 and the [Green Choice Program Regulation] (“the **Regulations**”) will enable eligible businesses and institutions within the Province of Nova Scotia to have renewable electricity procured on their behalf to meet energy and climate change goals.
- B. Pursuant to the GCP, public institutions that, collectively, consume a minimum of 10,000 megawatt hours (MWh) on an annual basis are eligible for participation in the GCP so long as each public institution in such group individually consumes a minimum of 2,000 MWh on an annual basis.
- C. The Members are entering into this Agreement to set out the terms and conditions on which the Members intend to combine their respective electricity loads for the purpose of collectively submitting an application in response to a Call for Expressions of Interest to participate in the GCP.

**NOW, THEREFORE** the Members hereto agree as follows:

#### 1. Objectives and key principles

- D. The Members hereby agree to aggregate their respective electricity loads at their respective electricity meters<sup>1</sup> for an aggregate annual consumption at a minimum of 10,000 MWh for the purpose of collectively participating as in the GCP as “partners” as such term is defined in Regulations (the “**Cooperation**”).<sup>2</sup>
- E. Each of the Members represents that it is a public institution as defined in the Regulations and individually consumes a minimum of 2,000 MWh on an annual basis and otherwise satisfies the eligibility requirements of the GCP. The annual electricity consumption of each Member is set out in Exhibit A hereto.
- F. The Members agree to submit a collective Expression of Interest application to enroll in the GCP and, if the Members are thereafter selected for participation in the GCP, each Member will

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<sup>1</sup> [NTD to CFR/DEM: Is this how the process is described in the draft Regulations? If not, there is value in keeping language consistent with Participant Agreement (i.e., “locations”).]

<sup>2</sup> [NTD to CFR/DEM: We propose not to redefine “Members” as “Partners” throughout the MoA as the nomenclature may be of concern to participants as it may suggest an intention to act in partnership).]

# ***SAMPLE DRAFT***



enter into a separate participant agreement with Nova Scotia Power Inc. (“**NSPI**”) in respect of their participation in the GCP (a “**Participant Agreement**”).

- G. The Members hereby agree to elect the same contract term lengths in their respective Participant Agreements.
- H. The Members hereby agree to elect [insert entity name here] (“**Designated Representative**”) as the Designated Representative:
- I. to submit the EOI and non-refundable application fee in the amount required by the Regulations on behalf of the Members (the “**Application Fee**”) in a timely manner and in any event within the deadlines prescribed by the Regulations; and
- J. until such time as the Members have entered into a Participant Agreement or have been informed that they have not been selected for participation in the GCP, act as the representative of the Members, to the extent required for the purpose of the Cooperation in accordance with the Regulations.
- K. The allocation among the Members for the Application Fee is set out in Exhibit A hereto.
- L. The Members hereby acknowledge and agree that Designated Representative will have access to each Member’s electricity consumption data for the purposes of the Cooperation, including for the purposes of completing the EOI. For the avoidance of doubt, such consumption data shall be subject to the requirements provided by Section 5 (Confidentiality).
- M. The Members hereby acknowledge that each Member will be required to submit a credit rating or provide a letter of good standing from Nova Scotia Power Incorporated (“**NSPI**”) to apply to the GCP and each Member agrees to provide same to the Procurement Administrator directly.
- N. The Members hereby agree to engage in regular communication to facilitate the Cooperation and, from time to time after the Effective Date, acting in a commercially reasonable manner, and upon the reasonable request of a Member, to execute, acknowledge or deliver any further instruments, information, or documents, and take such further actions as such other Member or Members may reasonably require to carry out the intent of this Agreement and to facilitate the Cooperation and the activities provided by Section 1.5.1 and 1.5.2.
- O. Exclusivity
- P. During the term of this Agreement, the Members shall not enter into an arrangement with a third party or parties where such arrangement is substantially similar to the Cooperation.
- Q. Liability
- R. Each Member (and its affiliates, and their respective employees and representatives) may provide information, recommendations and advice to the other as part of the Cooperation. The Members acknowledge and agree that, other than the representation of each Member set out in Section 1.2 and the information given pursuant to 1.6: (i) any information, recommendations and advice is given without any representations, warranties or liability; and (ii) a Member shall not have any claim, liability or cause of action against the other Members in respect of any such

# *SAMPLE DRAFT*



information, recommendation or advice given during the Cooperation. A Member shall not be liable to the other Members in respect of any liabilities in connection with the Cooperation, other than those obligations described in this Agreement, and in no event, will a Member be responsible to the other Members for any special, indirect or consequential losses (including lost profit). For the avoidance of doubt, nothing in this Agreement shall exclude any liability for fraudulent misrepresentation.

S. Duration and Termination

T. The initial term of this Agreement shall commence on the Effective Date and end at midnight on [insert date here].

U. This Agreement may be terminated by agreement of the Members at any time.

V. A Member (the “**Terminating Member**”) may terminate this Agreement at any time in the case of an Event of Default by another Member (the “**Defaulting Member**”). For purposes of this Agreement, “Event of Default” means:

- a. The Defaulting Member materially breaches this Agreement (or any other contract between the Members entered into pursuant to this Agreement) and such breach remains uncured for [insert number] days after being notified of the breach by the Terminating Member;
- b. The Defaulting Member voluntarily commences bankruptcy, insolvency, reorganization, stay, moratorium or similar debtor-relief proceedings, or shall have become insolvent or generally does not pay its debts as they become due, or admits in writing its inability to pay its debts, or makes an assignment for the benefit of creditor;
- c. Insolvency, receivership, reorganization, bankruptcy, or similar proceedings shall have been commenced against Defaulting Member and such proceedings remain undismissed or unstayed for a period of sixty (60) days; or
- d. Any assignment by the Defaulting Member not in accordance with this Agreement.

W. In the event of termination:

- a. The Members may (or if the aggregate electricity load of the non-defaulting Members is below 10,000 MWh or if, as a consequence of the Event of Default, the non-defaulting Members otherwise cease to be eligible for participation in the GCP, the Members shall) consult and use reasonable efforts to effect an orderly winding up of the activities of the Cooperation; however, if the eligibility in the GCP is not affected (and, without limiting the generality of the foregoing, the aggregate electricity loads of the Members that are not the Defaulting Member continue to be at a minimum of 10,000 MWh), the Members that are not the Defaulting Member may at their option continue the Cooperation without the participation of the Defaulting Member.

# SAMPLE DRAFT



- b. The Defaulting Member will forfeit its contribution towards the Application Fee and shall not be entitled to any refund or repayment on account thereof.
- c. This Section and Sections 3 (Liability), 5 (Confidentiality), 10 (Dispute Resolution Procedure) and 11 (Applicable Law) shall survive such termination.

## X. Confidentiality

Y. Except as and to the extent required by applicable law, the Receiving Member (as defined below) shall not disclose or use, and it shall cause its representatives not to disclose or use, any Confidential Information (as defined below) furnished by the other Members or their representatives in connection with this Agreement (the “**Disclosing Member**”) at any time or in any manner other than to the extent reasonably necessary to carry out the Cooperation. For purposes of this paragraph, " Confidential Information" means:

- a. A Disclosing Member’s electricity consumption data provided under Section 1.6; or
- b. Any information concerning the business and affairs of the Disclosing Member stamped "Confidential" or identified in writing as such to other Member or its representatives (the “**Receiving Member**”) by the Disclosing Member; provided that it does not include information which (i) is or becomes available to or known by the public or industry participants generally other than as a result of improper disclosure by the Receiving Member, (ii) is obtained by the Receiving Member from a source other than the Disclosing Member, provided that such source was not known by the Receiving Member to be bound by a duty of confidentiality to the Disclosing Member with respect to such information, or (iii) is independently developed by the Receiving Member prior to the Effective Date; or is independently developed by the Receiving Member thereafter by persons who did not have access to the Confidential Information.

Z. If the Agreement is terminated pursuant to Section 4, the Receiving Member shall promptly return to the Disclosing Member any Confidential Information in its possession.

AA. The Receiving Member agrees to indemnify and hold harmless the Disclosing Member from any damage, loss, cost or liability (including reasonable legal fees incurred to enforce this indemnification provision) arising out of any breach by the Receiving Member of Section 5.

BB. Successors and Assigns

CC. This Agreement shall be binding upon the successors and permitted assignees of each Member.

DD. This Agreement, and any rights or obligations in this Agreement, may only be assigned in whole, and not in part. A Member will not assign this Agreement, except to an assignee that assumes the obligations under this Agreement in writing and that delivers a written representation and confirmation to the other Members that such assignee is a public institution that individually consumes a minimum of 2,000 MWh on an annual basis and otherwise satisfies the eligibility requirements set out in the Regulations.

# ***SAMPLE DRAFT***

## **EE. Notices**

**FF.** All notices, statements or other documents which are required or contemplated by this Agreement shall be: (i) in writing and delivered personally or sent by registered or certified mail or overnight courier service to the address designated in writing, or (ii) by electronic mail, to the electronic mail address most recently provided to such party or such other electronic mail address as may be designated in writing by such party. Any notice or other communication so transmitted shall be deemed to have been given on the day of delivery when delivered, five (5) days after mailing if sent by mail, one (1) business day after delivery to an overnight courier service, and on the date of written confirmation of receipt if delivered by e-mail.

**GG.** For the purposes of this Section, notification details are the following, unless other details have been duly notified in accordance with this Section:

- a. [Designated **Representative**]: [specify contact details]
- b. [Member **2**]: [specify contact details]
- c. [Member **3**]: [specify contact details]
- d. [Member **4**]: [specify contact details]

## **HH. Entire Agreement**

**II.** This Agreement sets out the entire agreement between the Members with respect to the Cooperation. Neither Member has entered into this Agreement in reliance upon any representation, warranty or undertaking of the other Party that is not expressly set out or referred to in this Agreement. This Agreement supersedes any previous agreement or understanding relating to its subject matter.

**JJ.** This Agreement may not be varied except by agreement of the Members in writing.

## **KK. Severability**

**LL.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law (a) such provision shall be fully severable, (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom and (d) in lieu of such illegal, invalid or unenforceable provision, the Members agree to negotiate in good faith a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

## **MM. Dispute resolution procedure**

**NN.** If a dispute arises out of this Agreement, the Members will seek to resolve such dispute on an amicable basis among discussions of senior management. If this fails, any Member may submit the dispute to mediation.

## **OO. Applicable law and consent to jurisdiction**

# *SAMPLE DRAFT*

**PP.** This Agreement and all matters arising hereunder or in connection herewith shall be governed by, interpreted under, construed and enforced in accordance with the laws of the Province of Nova Scotia, without regard to conflicts of law principles.

**IN WITNESS WHEREOF** the Members have caused this Agreement to be executed by their duly authorized representatives:

**[Designated Representative]**

\_\_\_\_\_  
Name:

Title:

Date:\_\_\_\_\_

**[Member 2]**

\_\_\_\_\_  
Name:

Title:

Date:\_\_\_\_\_

**[Member 3]**

\_\_\_\_\_  
Name:

Title:

Date:\_\_\_\_\_

**[Member 4]**

\_\_\_\_\_  
Name:

Title:

Date:\_\_\_\_\_

# SAMPLE DRAFT

## EXHIBIT A

Members	Annual Electricity Consumption (MWh) and Facility Details	Allocation of Application Fee (\$)
[Designated Representative]		
[Member 2]		
[Member 3]		
[Member 4]		