

Appendix 2A

Pro-forma Participation Agreement

THIS PARTICIPATION AGREEMENT dated this ____ day of _____, 200__

BETWEEN:

Name of Applicant: _____

Description of Applicant: _____

Complete Address: _____

(hereinafter referred to as the “**Applicant**”)

-and-

Nova Scotia Power Incorporated, a corporation incorporated under the laws of Nova Scotia, having its Head Office in the City of Halifax, Province of Nova Scotia (Nova Scotia Power Inc as system operator, hereinafter referred to as “NSPSO”).

WHEREAS:

- A. The Applicant wishes to undertake one or more of the following activities:
 - i. schedule transactions for the provision or conveyance of electricity or Ancillary Services into, within or out of the Transmission System controlled by Nova Scotia Power Incorporated;
 - ii. register a facility to convey electricity or Ancillary Services into, within or out of the Transmission System controlled by Nova Scotia Power Incorporated;
 - iii. provide Ancillary Services to NSPSO or to a Market Participant; or
 - iv. reserve Point-to-Point Service under the Transmission Tariff.

- B. The *Electricity Act*, S.N.S. 2004, c. 25 and regulations made pursuant thereto and the Market Rules for the Nova Scotia electricity market (the “Market Rules”)

stipulate that no person shall undertake the activities referred to in recital A above unless Accredited as a Market Participant by NSPSO.

- C. The Market Rules further stipulate that no person shall be Accredited by NSPSO as a Market Participant unless the person agrees to be bound by the Market Rules by executing a Participation Agreement.
- D. The Market Rules contemplate that the Market Rules shall have the effect of a contract between each Market Participant and NSPSO by virtue of the execution of a Participation Agreement.
- E. The Applicant and NSPSO wish to enter into this Participation Agreement to satisfy the conditions contained in the Market Rules that a Participation Agreement be executed in order for NSPSO to Accredite the person as a Market Participant.

NOW THEREFORE, in consideration of the mutual covenants in this Participation Agreement and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

INTERPRETATION

- 1.1 **Incorporation of Market Rules Definitions:** Subject to section 1.2, capitalized terms used in this Agreement have the meanings given to them in Chapter 1 and Appendix 1A of the Market Rules.
- 1.2 **Supplementary Definitions:** In this Agreement, the following capitalized terms shall have the meanings set out below unless the context otherwise requires:
 - (a) **“Act”** shall mean the *Electricity Act*, S.N.S. 2004, c. 25 as amended from time to time, and includes any regulations made pursuant thereto.
 - (b) **“Agreement”** means this Participation Agreement, including the above recitals and Schedules, and the expressions “hereof” “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Participation Agreement and not to any particular section or other portion of this Participation Agreement; and
 - (c) **“Party”** means a party to this Agreement and “Parties” means every Party.

- 1.3 **Interpretation:** The General Rules of Interpretation outlined in Appendix 1B of the Market Rules shall apply in this Agreement.
- 1.4 **Headings:** The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement, nor shall they be construed as indicating that all of the provisions of this Agreement relating to any particular topic are to be found in any particular article, section, subsection, clause, provision, part or schedule.
- 1.5 **Imperative versus Permissive:** In this Agreement, the words “shall” or “must” shall be construed as imperative and the word “may” shall be construed as permissive.

ARTICLE 2

MARKET RULES

- 2.1 **Market Rules Govern:** In the event of any inconsistency between this Agreement and the Market Rules, the Market Rules shall prevail to the extent of the inconsistency.

ARTICLE 3

COMPLIANCE WITH MARKET RULES AND SPECIAL PROVISIONS

- 3.1 **Compliance Obligation:** Each Party agrees to be bound by and to comply with the Act, the regulations made pursuant thereto and all of the provisions of the Market Rules; as such Market Rules may be Amended by NSPSO from time to time in accordance with the Market Rules, so far as the Market Rules are applicable to such Party.
- 3.2 **Applicant’s Additional Compliance Obligation:** The Applicant agrees to comply with:
- (a) any conditions of participation imposed on the Accreditation of the Applicant as described in Schedule 2 of this Agreement, and
 - (b) any provisions imposed under section 2.1.5.3 of the Market Rules.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES

- 4.1 **Representations and Warranties of NSPSO:** NSPSO hereby represents and warrants as follows to the Applicant and acknowledges and confirms that the Applicant is relying on such representations and warranties in applying to be Accredited as a Market Participant:
- (a) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate and/or governmental action;
 - (b) this Agreement constitutes a legal and binding obligation of NSPSO, enforceable against NSPSO in accordance with its terms; and
 - (c) NSPSO in its role as system operator and transmission provider, shall maintain the confidentiality of information provided by a Market Participant that is defined as “Confidential Information” by the Market Rules, as required by the Market Rules and subject to the Board-approved Standards of Conduct published from time to time by NSPSO.
- 4.2 **Representations and Warranties of the Applicant:** The Applicant hereby represents and warrants as follows to NSPSO and acknowledges and confirms that NSPSO is relying on such representations and warranties without independent inquiry to ascertain whether the Applicant satisfies the requirements for Accreditation as a Market Participant under the Market Rules; and to authorize the Applicant as an Accredited Market Participant under the Market Rules:
- (a) it is a [form of business organization] duly [incorporated/formed/registered] and existing under the laws of [location];
 - (b) it has all the necessary corporate power to enter into and perform its obligations under this Agreement;
 - (c) the execution, delivery and performance of this Agreement by it has been duly authorized by all necessary corporate action and does not (or would not with the giving of notice, the lapse of time or the happening of any other event or condition) result in a violation or a breach of or a default under or give rise to a right of termination, greater rights or increased costs, amendment or cancellation or the acceleration of any obligation under (i) any charter or by-law instruments of the Applicant; (ii) any contracts or instruments to which the Applicant is bound; or (iii) any laws applicable to it;
 - (d) the individual(s) executing this Agreement, and any document in

connection herewith, on behalf of the Applicant have been duly authorized to execute this Agreement and have the full power and authority to bind the Applicant;

- (e) this Agreement constitutes a legal and binding obligation on the Applicant, enforceable against the Applicant in accordance with its terms;
- (f) except for Accreditation as a Market Participant and/or registration of any applicable Facilities by NSPSO under the Market Rules, it holds all permits, licences and other authorizations that may be necessary to enable it to carry on the business and perform the functions and obligations of a Market Participant as described in the Market Rules and in this Agreement;
- (g) the Applicant has adequate qualified employees and other personnel and organizational and other arrangements that are sufficient to enable it to perform all of the functions and obligations of a Market Participant under the Market Rules; and
- (h) the information provided in and in support of its Application for Accreditation is true, accurate and complete in all respects.

4.3 **Notification:** The Applicant shall promptly notify NSPSO of any circumstance that does or may result in any of the representations and warranties set forth in section 4.2 becoming untrue or inaccurate during the term of this Agreement and/or of any events, circumstances or conditions that has, had or could have the effect of resulting in the Applicant no longer being qualified for Accreditation.

ARTICLE 5

TERM AND TERMINATION

5.1 **Term:** This Agreement shall come into force on the date first noted above and shall remain in full force and effect until terminated in accordance with section 5.2.

5.2 **Termination:** Subject to sections 5.3 and 5.4, this Agreement shall automatically terminate on the earlier of:

- (a) the date of issuance to the Applicant of a Termination Order by NSPSO in accordance with section 2.6 of the Market Rules; or
- (b) the Applicant ceasing to be a Market Participant in accordance with

section 2.1.6 of the Market Rules.

- 5.3 **Ongoing Liability:** Notwithstanding section 5.2 above, if the Applicant becomes subject to a Termination Order or otherwise ceases to be a Market Participant, the Applicant shall remain subject to and liable for all of its obligations and liabilities as a Market Participant that were incurred or arose under the Market Rules prior to the date on which the Termination Order was issued or the date on which it otherwise ceased to be a Market Participant, as the case may be, regardless of the date on which any claim relating thereto may be made.
- 5.4 **Termination for bankruptcy:** In the event of any liquidation, winding up or bankruptcy of a Party, whether voluntary or compulsory, or any composition with creditors or scheme of arrangement, the other Party may terminate this Agreement immediately upon notice in writing to the Party that is subject to the liquidation, winding up or bankruptcy or receiver or trustee in bankruptcy acting in relation thereto, without prejudice to any other right or remedy the other Party may have.
- 5.5 **Confidentiality:** Notwithstanding section 5.2, if the Applicant becomes subject to a Termination Order or otherwise ceases to be a Market Participant, the Applicant shall remain subject to any confidentiality provisions contained in the Market Rules for all information obtained by or provided to the Applicant while the Applicant was a Market Participant.
- 5.6 **Survival:** Notwithstanding any provision to the contrary and for greater certainty, the terms of sections 5.3 and 5.5 shall survive any termination of this Agreement without limit as to time.

ARTICLE 6

LIABILITY AND INDEMNIFICATION

- 6.1 **Limitation of Liability:** Sections 1.6.5 and 1.6.7 of the Market Rules apply to this Agreement and are hereby incorporated by reference herein, with all references in such section to a Market Participant being deemed to include references to the Applicant.

ARTICLE 7

MISCELLANEOUS

- 7.1 **Amendment:** No amendment of this Agreement shall be effective unless made in writing and signed by the Parties.
- 7.2 **Assignment:** No Party may assign or transfer, whether absolutely, by way of security or otherwise, all or any part of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld.
- 7.3 **Use of Third Parties by the Applicant:** For greater certainty, except as otherwise provided in the Market Rules and without prejudice to the application of section 2.2.2.6 of the Market Rules, the Applicant may use such personnel, service providers or other agents as the Applicant, in its sole discretion, considers appropriate for the purpose of assisting in the performance of its obligations under the Market Rules; provided that the Applicant shall ensure such personnel, service providers or other agents adhere to the terms of this Agreement and the Market Rules, and in any event, the Applicant shall be responsible for any breach of this Agreement or the Market Rules by any such personnel, service providers or other agents.
- 7.4 **Successors and Assigns:** This Agreement shall enure to the benefit of, and be binding on, the Parties and their respective heirs, administrators, executors, successors and permitted assigns.
- 7.5 **Further Assurances:** Each Party shall promptly execute and deliver or cause to be executed and delivered all further documents in connection with this Agreement that the other Party may reasonably require for the purposes of giving effect to this Agreement.
- 7.6 **Waiver:** A waiver of any default, breach or non-compliance under this Agreement is not effective unless in writing and signed by the Party to be bound by the waiver. No waiver will be inferred or implied by any failure to act or by the delay in acting by a Party in respect of any default, breach or non-observance or by anything done or omitted to be done by the other Party. The waiver by a Party of any default, breach or non-compliance under this Agreement shall not operate as a waiver of that Party's rights under this Agreement in respect of any continuing or subsequent default, breach or non-observance (whether of the same or any other nature).
- 7.7 **Severability:** Any provision of this Agreement that is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of that invalidity or unenforceability and shall be deemed severed from the remainder of

this Agreement, all without affecting the validity or enforceability of the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

7.8 **Notices:** Any notice, demand, consent, request or other communication required or permitted to be given or made under this Agreement shall:

- a) be given or made in the manner set forth in section 1.6.3 of the Market Rules;
- b) be addressed to the other Party in accordance with the information set forth in Schedule 1; and
- c) be treated as having been duly given or made in accordance with the provisions of section 1.6.3 of the Market Rules. Either Party may change its address and representative as set forth in Schedule 1 by written notice to the other Party given as aforesaid. Such change shall not constitute an amendment to this Agreement for the purposes of the application of section 7.1.

7.9 **Governing Law:** This Agreement shall be governed by and construed in accordance with the laws of the Province of Nova Scotia and the federal laws of Canada applicable therein.

7.10 **Dispute Resolution:** Section 2.8.2 of the Market Rules applies to any dispute that arises under this Agreement and is incorporated by reference herein, with such modifications as the context may require.

7.11 **Attornment:** Each Party agrees (i) that any action or proceeding relating to this Agreement shall be brought in any court of competent jurisdiction in the Province of Nova Scotia, and for that purpose now irrevocably and unconditionally attorns and submits to the jurisdiction of such Nova Scotia court; (ii) that it irrevocably waives any right to, and will not, oppose any such Nova Scotia action or proceeding on any jurisdictional basis, including *forum non conveniens*; and (iii) not to oppose the enforcement against it in any other jurisdiction of any judgment or order duly obtained from a Nova Scotia court.

7.12 **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Parties shall adopt any signatures received by a receiving facsimile machine as original signatures of the Parties; provided, however, that any Party providing its signature in such manner shall promptly forward to the other Party an original signed copy of this Agreement which was so faxed.

IN WITNESS WHEREOF the Parties have, by their duly appointed and authorized representatives, executed this Agreement.

Applicant

Nova Scotia Power Incorporated.

Date: _____

Date: _____

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

SCHEDULE 1**REPRESENTATIVES FOR NOTIFICATIONS (section 7.8)****NSPSO**

Name of NSPSO Representative:	Market Administrator
Title:	
Address:	5 Long Lake Drive
City/Province/Postal Code	Halifax, NS B3J 1N8
Email address:	nspsoadmin@nspower.ca
Phone:	(902) 428-7719
Fax:	(902) 428-7799

Applicant

Name of Applicant Representative:	
Title:	
Name of Applicant:	
Address:	
City/Province/Postal Code:	
Email address:	
Phone:	
Fax:	

SCHEDULE 2

SPECIAL CONDITIONS OF PARTICIPATION (section 3.2 (a))