

## B1 - SCHOOL ENERGY COALITION INTERROGATORY - 048

### **Reference:**

Exhibit B-1-1, SPF Section 1.3, Page 2

### **Interrogatory:**

For each third-party expert report included in the application, if not already included in the evidence, please provide a copy of the retainer letter.

### **Response:**

The retainer letters for the third-party expert reports are provided in Attachments 1 through 20.

Attachment	Vendor and Study
1	CN Utility – Vegetation Management Program
2	Compass – Billing and Call Center Costs Benchmarking
3	Navigant – Pole Replacement Program Study and Poles and Stations Benchmarking Studies Distribution Poles and Substations Benchmarking
4	Navigant – AMI Replacement Costs Benchmarking Study
5	Teshmont – Line Loss Assessment
6	Utilimarc – Fleet Operations Benchmarking Report and Fleet Lifecycle Study
7	UMS Group – Transmission Capital Project Execution Review
8	Clear Spring Energy Advisors – Benchmarking and Productivity Research
9	Concentric Energy Advisors – Hydro One Productivity Framework Review
10	Black and Veatch – Report on Corporate Cost Allocation Review
11	UMS Group – Common Corporate Costs Benchmarking Study
12	Alliance – Electricity Utility Plant Depreciation Rate Study
13	PwC – Capitalization of Common Corporate Costs Review and US GAAP to IFRS Conversion Impact Review
14	Mercer - Compensation Benchmarking Study
15	Atrium Economics – Corporate Cost and Common Asset Allocation and Overhead Capitalization
16	Hydro Quebec – Accelerated Life Testing of Meters
17	Electric Power Research Institute, Inc. (EPRI) – Transformer Condition Assessment
18	Gartner – Enterprise IT Spending & Staffing Benchmark
19	Guidehouse – Working Capital Requirements
20	Innovative Research Group – Customer Engagement and Specific Service Charges Study

Filed: 2021-11-29  
EB-2021-0110  
Exhibit I  
Tab 22  
Schedule B1-SEC-048  
Page 2 of 2

1

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Witness: Various

**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

**March 2, 2020**

Mr. Randall Miller  
CN Utility Consulting, Inc.  
5930 Grand Ave  
West Des Moines, IA 50266

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Distribution Vegetation Management Study**

Dear Mr. Miller:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023 to 2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain CN Utility Consulting Inc. (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**I. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

## 2. **Consultant Expertise**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be:

- Randall Miller, Director of Research and Development
- Phil Chen, Manager of Research and Development

collectively referred to as the "Sponsors".

## 3. **Scope of Services and Work Product**

The Consultant will:

- (a) carry out an independent review and assessment of Hydro One's distribution vegetation management program, including by studying and performing comparisons of relevant metrics with a view to providing insights into how Hydro One's distribution vegetation management program compares with its peer organizations (the "Study");
- (b) present the findings and results of the Study to Torys and Hydro One on a date and at a location to be agreed upon, which shall be no later than July 15, 2020 (the "Presentation of Findings");
- (c) if requested by Torys, produce a written report detailing the Study's methodology, analysis performed and the Consultant's findings and recommendations (the "Report"), which may be filed with the Board in connection with the Application; and
- (d) if requested by Torys, provide support during the hearing of the Application and testify before the Board in the Application, in connection with the scope of the services provided hereunder ("Application Support" and, together with the Study and the Report, the "Services").

## 4. **Fees and Invoices**

By entering into this Retainer Agreement, the Consultant acknowledges that:

- (a) the price for the Consultant to perform the Study and deliver the Presentation of Findings shall be determined based on the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys;
- (b) the price for the Consultant to prepare and deliver the Report, if requested, shall be determined based on the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys; and



- (c) the price for the Consultant to provide Application Support services, if requested, will be charged at the following hourly rates:



All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
483 Bay St.  
7<sup>th</sup> Floor, South Tower  
Toronto, Ontario M5G 2P5  
[regulatory@HydroOne.com](mailto:regulatory@HydroOne.com)

with a copy to Torys, to the attention of:

Mr. Charles Keizer  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[ckeizer@torys.com](mailto:ckeizer@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority.

## 5. Confidentiality

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information,

whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One, and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.



## 7. **Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## 8. **Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

## 9. **Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as **Schedules 'A' and 'B'** hereto.

## 10. **Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

11. **Entire Agreement**

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

12. **Governing Law**

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Sincerely,

**TORYS LLP**

Per: 

Name: Charles Keizer  
Partner

Accepted and agreed to by **CN Utility Consulting, Inc.**

Signed 

Name (please print) Randall H. Miller

(I have the authority to bind the Consultant)

## SCHEDULE 'A'

### **Rule 13A of the Board's Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

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<sup>1</sup> Attached as **Schedule 'B'** herein.

**SCHEDULE 'B'**

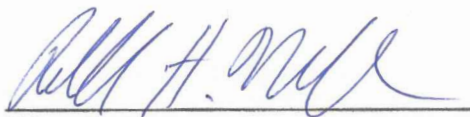
**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is...Randall H. Miller..... (name). I live at ..Syracuse..... (city), in the ..state..... (province/state) of Utah.....
2. I have been engaged by or on behalf of...Hydro One..... (name of party/parties) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date March 12, 2020.....



Signature



**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

May 22, 2020

Hack Heyward  
Partner  
Compass Management Consulting Limited  
2187 Atlantic Street  
Stamford, CT 06902

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Billing & Call Centre Costs Benchmarking**

Dear Mr. Heyward:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Compass Management Consulting Limited<sup>1</sup> (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

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<sup>1</sup> A wholly owned subsidiary of Information Services Group, Inc.

## 2. **Consultant Expertise**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be:

- Tom Kawamoto            Director
- Jon Brock                Director
- Korey Barnard           Director
- Neha Shrivastava        Financial Analyst
- Bob Lutz                 Partner

(collectively referred to as the “Sponsors”).

## 3. **Scope of Services and Work Product**

The Consultant will:

- (a) carry out an independent study to benchmark Hydro One’s billing and call centre costs relative to the equivalent costs of an appropriate peer group (the “Study”);
- (b) present the findings and results of the Study to Torys and Hydro One on a date and at a location to be agreed upon (the “Presentation of Findings”), which shall be no later than July 10, 2020, unless otherwise agreed to by the parties;
- (c) if requested by Torys, produce draft and/or final written report(s) detailing the Study’s methodology, analysis performed and the Consultant’s findings and conclusions (the “Report(s)”), which (i) shall be delivered to Torys no later than August 7, 2020 for the draft Report and August 21, 2020 for the final Report, unless otherwise agreed to by the parties and (ii) may be filed with the Board in connection with the Application; and
- (d) if requested by Torys, provide support during the hearing of the Application and testify before the Board in the Application, in connection with the scope of the services provided hereunder (“Application Support” and, together with the Study, the Presentation of Findings and the Report(s), the “Services”).

## 4. **Fees and Invoices**

By entering into this Retainer Agreement, the Consultant acknowledges that:

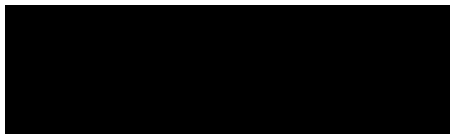
- a) the price for the Consultant to perform the Study and deliver the Presentation of Findings shall be determined based on the hourly rates set forth in paragraph (c) below and in no

event exceed [REDACTED] without prior written approval from Torys or Hydro One;

- b) the price for the Consultant to prepare and deliver the Report(s) (if requested by Torys) shall be determined based on the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] for the draft Report and [REDACTED] for the final Report (net of HST) without prior written approval from Torys or Hydro One;
- c) the price for the Consultant to provide Application Support services (if requested by Torys), *other than* expert witness testimony before the Board during the hearing of the Application, will be charged at the following hourly rates:



- d) the price for the Consultant to provide Application Support services (if requested by Torys) in the form of expert witness testimony before the Board during the hearing of the Application will be charged at the following hourly rates:



All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
Regulatory Affairs Department  
483 Bay St.  
7th Floor, South Tower  
Toronto, Ontario M5G 2P5  
[Regulatory@HydroOne.com](mailto:Regulatory@HydroOne.com)

with a copy to Torys, to the attention of:

Mr. Charles Keizer  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[ckeizer@torys.com](mailto:ckeizer@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority. Invoices are payable by electronic funds transfer within thirty (30) days after receipt.

## **5. Confidentiality**

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One, and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request; provided, however, the Consultant may retain an archival copy that is retained in accordance with Consultant's bona fide document retention policies or standard back-up procedures. The terms of the Retainer Agreement shall continue to apply to any documents retained by Consultant pursuant to this Section 5.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property

is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not; provided, however, that the Consultant may retain an archival copy in accordance with Section 5 of this Retainer Agreement. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total aggregate liability for all claims arising out of the performance of the Services, regardless of the form of claims, will in no event exceed [REDACTED] and under no circumstances will either party be liable for any damages in respect of any incidental, punitive,

special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

#### **9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as Schedules 'A' and 'B' hereto.

#### **10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

#### **11. Entire Agreement**

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

#### **12. Governing Law**

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Sincerely,

TORYS LLP

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

*Charles Keizer,  
Partner*

Accepted and agreed to by Compass Management Consulting Limited

Signed   
\_\_\_\_\_

Name (please print) Richard L. Fogel, General Counsel

(I have the authority to bind the Consultant)



## **SCHEDULE ‘A’**

### **Rule 13A of the Board’s Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert’s area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert’s evidence shall, at a minimum, include the following:

- (a) the expert’s name, business name and address, and general area of expertise;
- (b) the expert’s qualifications, including the expert’s relevant educational and professional experience in respect of each issue in the proceeding to which the expert’s evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert’s evidence relates;
- (d) the specific information upon which the expert’s evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert’s evidence, a summary of the points of agreement and disagreement with the other expert’s evidence; and
- (f) an acknowledgement of the expert’s duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>2</sup>.

---

<sup>2</sup> Attached as Schedule 'B' herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*



79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2 Canada  
P. 416.865.0040 | F. 416.865.7380  
www.torys.com

Charles Keizer  
ckeizer@torys.com  
P. 416-865-7512

**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

February 26, 2020

Mr. Craig Sabine  
Director, Canadian Utilities Lead  
Navigant Consulting Ltd.  
100 King St West - Suite 4950  
Toronto, ON M5X 1B1

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Poles and Stations Costing Study**

Dear Mr. Sabine:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Navigant Consulting Ltd. (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

## 2. **Consultant Expertise**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsor of the work of the Consultant and the person who has the relevant expertise will be Mr. Ken Buckstaff. In addition, quality assurance for the Services will be provided by Mr. Craig Sabine (together with Mr. Buckstaff, the "Sponsors")

## 3. **Scope of Services and Work Product**

The Consultant will:

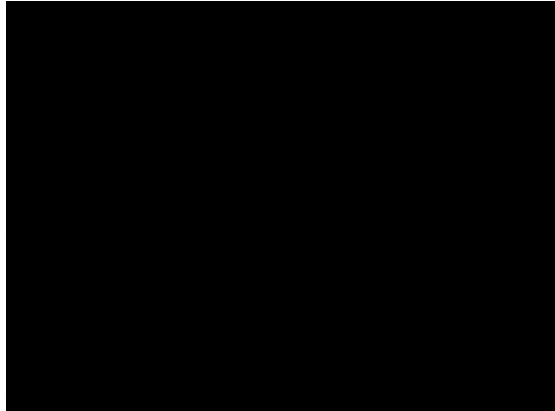
- (a) carry out an independent review and assessment of Hydro One's poles and stations costs, with a view to providing insights into how the relevant cost, reliability and safety metrics align with a representative peer group and opportunities for efficiency gains and cost optimization on a comparative basis (the "Study");
- (b) present the findings and results of the Study to Torys and Hydro One on a date and at a location to be agreed upon, which shall be no later than July 15, 2020 (the "Presentation of Findings");
- (c) if requested by Torys, produce a written report detailing the Study's methodology, analysis performed and the Consultant's findings and recommendations (the "Report"), which may be filed with the Board in connection with the Application; and
- (d) if requested by Torys, provide support during the hearing of the Application and testify before the Board in the Application, in connection with the scope of the services provided hereunder ("Application Support" and, together with the Study and the Report, the "Services").

## 4. **Fees and Invoices**

By entering into this Retainer Agreement, the Consultant acknowledges that:

- (a) the price for the Consultant to perform the Study and deliver the Presentation of Findings shall be determined based on hourly rates that are [REDACTED] the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys;
- (b) the price for the Consultant to prepare and deliver the Report, if requested, shall be determined based on hourly rates that are [REDACTED] the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys; and

- (c) the price for the Consultant to provide Application Support services, if requested, will be charged at the following hourly rates:



All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
483 Bay St.  
7<sup>th</sup> Floor, South Tower  
Toronto, Ontario M5G 2P5  
[regulatory@HydroOne.com](mailto:regulatory@HydroOne.com)

with a copy to Torys, to the attention of:

Mr. Charles Keizer  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[ckeizer@torys.com](mailto:ckeizer@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority.

## 5. Confidentiality

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One.

The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One, and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless



from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

#### 7. Termination

Torys may terminate this Retainer Agreement at any time on fifteen (15) days' written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

#### 8. Limitation of Liability

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind. With regard to breach of confidentiality obligations, the Consultant's total liability shall not exceed [REDACTED]

#### 9. Independence

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as **Schedules 'A' and 'B'** hereto.

#### 10. Responsibility Statement

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer

Agreement, or, if the Services cannot be redone, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

#### 11. Entire Agreement

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

#### 12. Governing Law

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

#### 13. Hydro One Authorization

Torys represents that it has the authority from Hydro One to enter into this Retainer Agreement on Hydro One's behalf and bind Hydro One to all of its terms.

Sincerely,

**TORYS LLP**

Per: 

Name: Charles Weizer  
Partner

Accepted and agreed to by Navigant Consulting Ltd.

Signed 

Name (please print)

Craig Sabine, Director  
(I have the authority to bind the Consultant)

## **SCHEDULE 'A'**

### **Rule 13A of the Board's Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

---

<sup>1</sup> Attached as **Schedule 'B'** herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*

**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

April 28, 2020

Mr. Craig Sabine  
Director, Canadian Utilities Lead  
Navigant Consulting Ltd.  
100 King St West - Suite 4950  
Toronto, ON M5X 1B1

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Smart Meter Benchmarking**

Dear Mr. Sabine:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Navigant Consulting Ltd. (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

## 2. **Consultant Expertise**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be:

- Andrea Roszell            Director
- Andy Tam                Associate Director
- Erik Gilbert             Director
- Ken Buckstaff          Managing Consultant
- Rylan Urban             Consultant

(collectively referred to as the “Sponsors”).

## 3. **Scope of Services and Work Product**

The Consultant will:

- (a) carry out an independent study to benchmark Hydro One’s advanced metering infrastructure (“AMI”) replacement costs relative to the equivalent costs of an appropriate peer group (the “Study”);
- (b) present the findings and results of the Study to Torys and Hydro One on a date and at a location to be agreed upon (the “Presentation of Findings”), which shall be no later than July 24, 2020, unless otherwise agreed to by the parties;
- (c) if requested by Torys, produce draft and/or final written report(s) detailing the Study’s methodology, analysis performed and the Consultant’s findings and conclusions (the “Report(s)”), which (i) shall be delivered to Torys no later than August 14, 2020 for the draft Report and August 28, 2020 for the final Report, unless otherwise agreed to by the parties and (ii) may be filed with the Board in connection with the Application; and
- (d) if requested by Torys, provide support during the hearing of the Application and testify before the Board in the Application, in connection with the scope of the services provided hereunder (“Application Support” and, together with the Study, the Presentation of Findings and the Report(s), the “Services”).

## 4. **Fees and Invoices**

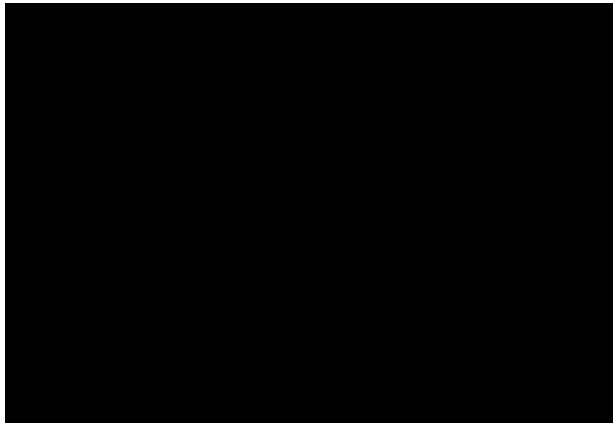
By entering into this Retainer Agreement, the Consultant acknowledges that:

- a) the price for the Consultant to perform the Study and deliver the Presentation of Findings, shall be determined based on the hourly rates that are [REDACTED] the hourly rates set forth in



paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys or Hydro One;

- b) the price for the Consultant to prepare and deliver the Report(s) (if requested by Torys) shall be determined based on hourly rates that are [REDACTED] of the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys or Hydro One; and
- c) the price for the Consultant to provide Application Support services (if requested by Torys) will be charged at the following hourly rates:



All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
Regulatory Affairs Department  
483 Bay St.  
7th Floor, South Tower  
Toronto, Ontario M5G 2P5  
[Regulatory@HydroOne.com](mailto:Regulatory@HydroOne.com)

with a copy to Torys, to the attention of:

Mr. Charles Keizer  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[ckeizer@torys.com](mailto:ckeizer@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the

Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority.

## **5. Confidentiality**

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One, and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any

pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the “Consultant Property”). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant’s Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on fifteen (15) days’ written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant’s obligation to indemnify under section 6 (Intellectual Property), the Consultant’s total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind. With regard to breach of confidentiality obligations or privacy laws, the Consultant’s total liability shall not exceed [REDACTED]

## **9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board’s *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as Schedules ‘A’ and ‘B’ hereto.

## **10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, if the Services cannot be redone, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

#### **11. Entire Agreement**

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.


#### **12. Governing Law**

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

*[Remainder of page intentionally left blank.]*

Sincerely,

TORYS LLP

Per:   
Name: Charles Keizer  
Partner

Accepted and agreed to by Navigant Consulting Ltd.

Signed   
\_\_\_\_\_

Name (please print) Craig Sabine, Director  
(I have the authority to bind the Consultant)

## **SCHEDULE 'A'**

### **Rule 13A of the Board's Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

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<sup>1</sup> Attached as Schedule 'B' herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*



**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

28 August 2020

Robyn L. Koropatnick  
Teshmont Consultants LP  
1200, 1122 4th Street SW  
Calgary, Alberta T2R 1M1

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Transmission Line Loss Review**

Dear Ms. Koropatnick:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Teshmont Consultants LP (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

## 2. **Consultant Expertise**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be :

- Dr. Ashikur Bhuiya Senior Supervising Engineer
- Dr. Ashraf Haque Supervising Engineer

(collectively referred to as the “Sponsors”).

## 3. **Scope of Services and Work Product**

The Consultant will:

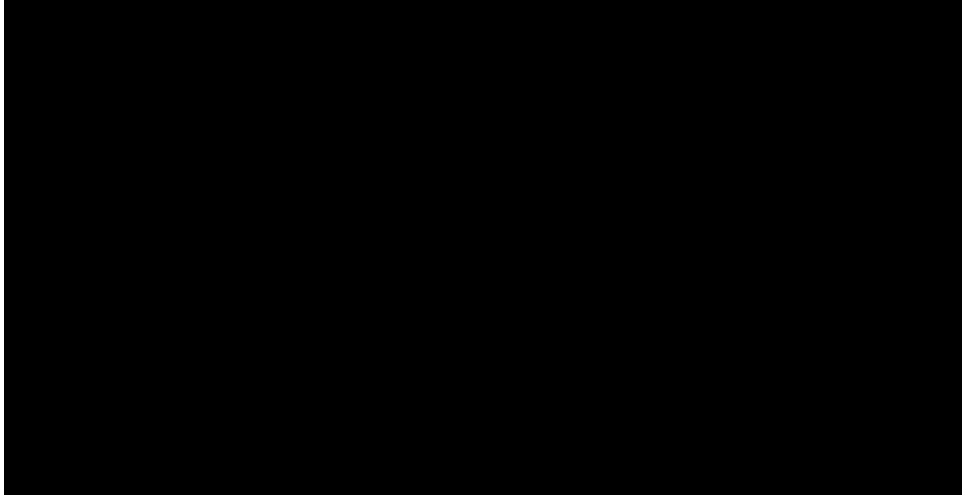
- (a) carry out a review of Hydro One’s transmission line loss processes with a view to assess the principles and completeness of such processes and identify potential opportunities to cost-effectively reduce transmission line losses (the “Study”);
- (b) if requested by Torys, produce draft and/or final written report(s) detailing the Study’s methodology, review performed and the Consultant’s findings and recommendations (the “Report(s)”), which (i) shall be delivered to Torys no later than: **December 31, 2020** for the draft Report and **February 1, 2021** for the final Report, unless otherwise agreed to by the parties and (ii) may be filed by Torys with the Board in connection with the Application; and
- (c) if requested by Torys, provide support during the hearing of Application and testify before the Board in the Application, connection with the scope of the services provided hereunder (“Application Support” and, together with the Study and the Report(s), the “Services”).

## 4. **Fees and Invoices**

By entering into this Retainer Agreement, the Consultant acknowledges that:

- a) the price for the Consultant to perform the Study shall be determined based on the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys or Hydro One;
- b) the price for the Consultant to prepare and deliver the Report(s) (if requested by Torys) shall be determined based on the hourly rates set forth in paragraph (c) below and in no event exceed [REDACTED] without prior written approval from Torys or Hydro One; and
- c) the price for the Consultant to provide Application Support (if requested by Torys) shall:
  - (i) be charged at the following hourly rates, which may be subject to an annual inflationary increase no greater than [REDACTED], effective January 1 of each year during the term

of this Retainer Agreement, and (ii) inclusive of all reasonable pre-approved out-of-pocket expenses incurred by the Consultant in providing such Application Support (including the cost of any travel), in no event exceed [REDACTED] without prior written approval from Torys or Hydro One. For greater certainty, for the purpose of this paragraph (c), these rates will apply to time spent by the Consultant's employees for purposes of reviewing and providing comments on materials, responding or assisting in responding to questions (including interrogatories), testifying and preparing to testify, as well as assisting Torys in advising Hydro One in connection with the Application process or related investigations.



All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
Regulatory Affairs Department  
483 Bay St.  
7th Floor, South Tower  
Toronto, Ontario M5G 2P5  
[Regulatory@HydroOne.com](mailto:Regulatory@HydroOne.com)

with a copy to Torys, to the attention of:

Mr. Charles Keizer  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[ckeizer@torys.com](mailto:ckeizer@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority. Invoices are payable within thirty (30) days after receipt.

## **5. Confidentiality**

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request; provided, however, the Consultant may retain an archival copy that it is required to retain pursuant to applicable law or *bona fide* document retention policies or standard back-up procedures. The terms of the Retainer Agreement shall continue to apply to any documents retained by Consultant pursuant to this Section 5.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or

implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not; provided, however, the Consultant may retain an archival copy of such documents and materials in accordance with Section 5 above. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

**9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as Schedules 'A' and 'B' hereto.

**10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

**11. Entire Agreement**

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

**12. Governing Law**

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

*[Remainder of page intentionally left blank.]*

Sincerely,

TORYS LLP

Per:

Name:  \_\_\_\_\_  
Charles Keizer, Partner


Accepted and agreed to by

Teshmont Consultants LP

by its General Partner, Teshmont GP Inc.

Signed

Name:

 \_\_\_\_\_  
Ralph D. Kurth, PEng PMP  
President and CEO

(I have the authority to bind the Consultant)

## **SCHEDULE 'A'**

### **Rule 13A of the Board's Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;



(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

---

<sup>1</sup> Attached as Schedule 'B' herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*



79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2 Canada  
P. 416.865.0040 | F. 416.865.7380  
www.torys.com

Charles Keizer  
ckeizer@torys.com  
P. 416-865-7512

Filed: 2021-11-29

EB-2021-0110

Exhibit I-22-B1-SEC-48

Attachment 6

Page 1 of 10

**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

February 3, 2020

Christopher Shaffer  
Utilimarc, Inc.  
1660 Highway 100 S #319,  
St Louis Park, MN 55416

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Fleet Services**

Dear Mr. Shaffer:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Utilimarc, Inc. (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing and sending back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest (defined below) or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

For the purposes hereof, “conflict of interest” means any situation or circumstance where, in relation to the performance of the Services (defined below) under this Retainer Agreement, the Consultant’s other commitments, relationships or financial interests (i) could or could reasonably be seen to give rise to an improper influence over the objective, unbiased and impartial exercise of its independent judgment in performing the Services or (ii) could or could reasonably be seen to compromise, impair or be incompatible with the effective performance of its Services. For the avoidance of any doubt, the performance of services unrelated to the Application or to any matters

or parties involved in the hearing of the Application before the Board on behalf of clients of Consultant competitive to Hydro One shall not be deemed to be a conflict of interest hereunder.

## **2. Consultant Sponsors**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be:

- Christopher Shaffer                      CEO
- Jessica Schunk                          Senior Analyst

Collectively referred to as the “Sponsors”.

## **3. Scope of Services and Work Product**

- (a) The Consultant will:
  - (i) carry out an independent review and assessment of Hydro One’s fleet operations performance in respect of fleet cost, including capital costs and OM&A costs and leveraging the Consultant’s Fleet Benchmarking Module and Vehicle Replacement Module using year-end 2019 data, with a view to providing insights into how Hydro One’s costs align with its peer organizations (the “Study”);
  - (ii) present the findings and results of the Study to Torys and Hydro One on a date and at a location to be agreed upon by Consultant and Torys, which shall be no later than June 30, 2020 (the “Presentation of Findings”);
  - (iii) if requested by Torys, produce a written report (based on Consultant’s standard template for reporting the results of comparable benchmarking studies) within 10 business days of such request, detailing the Study’s methodology, analysis performed and the Consultant’s findings (the “Report”), which may be filed with the Board in connection with the Application; and
  - (iv) if requested by Torys, provide support during the hearing of the Application and testify before the Board in the Application, in connection with the scope of the services provided hereunder (“Application Support” and, together with the Study and the Report, the “Services”).
- (b) In the event Consultant’s employees are requested to provide certain Services in Canada, Torys and/or Hydro One shall provide Consultant and/or its employees with letters of invitation to help facilitate the entry of Consultant’s employees into Canada to provide Services.
- (c) The Study shall be prepared by Consultant remotely and not onsite at Torys’ and/or Hydro One’s offices, except as otherwise set out in this Retainer

Agreement. Torys and/or Hydro One shall provide that data and information as reasonably requested and/or required by Consultant in order to permit Consultant to perform the Study. Consultant's responsibility for any errors or omissions in the Study shall be mitigated to the extent of inaccurate information provided to Consultant hereunder, except to the extent that such inaccuracies should have been patently obvious to Consultant.

#### 4. Fees and Invoices

By entering into this Retainer Agreement, the Consultant acknowledges that:

- (a) the price for the Consultant to perform the Study, deliver the Presentation of Findings, and prepare and deliver the Report (if requested) shall be a [REDACTED] [REDACTED], unless otherwise agreed to by Torys and Consultant in writing; and
- (b) the price for the Consultant to provide Application Support services, if requested, including preparation for any hearing before the Board, will be charged at the hourly rate of [REDACTED].

All amounts stated herein are in U.S. dollars. All payments shall be made within thirty (30) days of the date of invoice. The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ruhit Patil  
Hydro One Networks Inc.  
6975 Kenderry Gate  
Mississauga, ON L5T 2Y1

with a copy to Torys, to the attention of:

Mr. Charles Keizer  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[ckeizer@torys.com](mailto:ckeizer@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority. Upon the Consultant's written request, Hydro One shall promptly provide Consultant with copies of all documentation and filings made or required in connection with the payment of any such withholding taxes.

#### 5. Confidentiality

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to the matter contemplated by this Retainer Agreement.

The Consultant agrees to hold in confidence and not disclose: (a) all information provided to the Consultant by Torys or Hydro One, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One. The Consultant agrees to return these documents on request; provided, however, Consultant may retain electronic copies that: (A) reside on Consultant's back-up, disaster recovery or business continuity systems, or (B) that the Consultant is required by applicable law or bona fide internal/external document retention policies to retain; provided, however, all other terms of this Retainer Agreement related to the Confidential Information shall continue to apply.

For purposes of this Retainer Agreement, "Confidential Information" shall not include any information which: (a) Consultant can demonstrate that at the time of disclosure was published or otherwise in the public domain; (b) after disclosure becomes part of the public domain through means other than a breach of this Retainer Agreement by Consultant; (c) Consultant can reasonably substantiate by documentary evidence was known to Consultant prior to its receipt; (d) at the time of disclosure is, or thereafter becomes, available to Consultant on a non-confidential basis from a third-party source, provided that such third party is not and was not prohibited from disclosing such Confidential Information to the Consultant by any legal, fiduciary, or contractual obligation; or (e) was or is independently developed by Consultant without utilizing any Confidential Information. Additionally, Consultant shall not be deemed to have disclosed Confidential Information in violation of this Retainer Agreement if, and then only to the extent that, Consultant can reasonably demonstrate that Consultant was required to make such disclosure pursuant to any applicable law, regulation or governmental order, or pursuant to any judgment, order, decree or award of a court of competent jurisdiction; provided that Consultant shall (A) provide Torys with prompt and at least 10 days advance written notice (or if the circumstances do not permit such advance written notice, as much advance notice as is reasonably practicable under the circumstances) prior to the required date of such disclosure, (B) reasonably cooperate, at no expense to Consultant, with Torys and/or Hydro One in obtaining a protective order or other remedy to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material, and (C) in the event that such a protective order or other remedy is not obtained, disclose only that portion of the Confidential Information that is required to be disclosed, on the advice of Consultant's legal counsel, and use its reasonable efforts to obtain assurances that confidential treatment will be accorded to such Confidential Information.

Notwithstanding anything set forth above, the Consultant may use information provided by Hydro One in its reports and services during and after the term of this engagement so long as

such information is anonymized, even though such information would constitute Confidential Information (as defined above).

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant specifically in its performance of Services hereunder, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product (provided Torys and Hydro One are not in breach of the payment obligations under Section 4 herein), notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, research and data, together with all intellectual property rights therein, as well as all mental processes and analyses used herein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement until the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application.

The Consultant expressly warrants that to its knowledge after due inquiry, the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. The Consultant may terminate this Retainer Agreement on thirty (30) days' written notice if Torys or

Hydro One breaches the payment terms and conditions set forth in Section 4 above, and such termination shall become effective only if Torys or Hydro One fails to cure such breach within thirty (30) days of receipt of such written notice. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement and payment in full for Services provided, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not, except as provided above. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies, subject to the limitations described above.

#### **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

#### **9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as **Schedules 'A' and 'B'** hereto.

#### **10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm in the same industry, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

#### **11. Entire Agreement**



This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

**12. Governing Law**

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Sincerely,

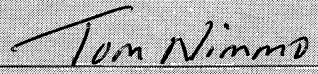
**TORYS LLP**

Per: 

Name: Charles Keizer  
Partner

Accepted and agreed to by Utilimarc, Inc.

Signed 

Name (please print) 

(I have the authority to bind the Consultant)

## **SCHEDULE 'A'**

### **Rule 13A of the Board's Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

---

<sup>1</sup> Attached as **Schedule 'B'** herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*

**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

September 22, 2020

Mr. Steven J. Morris  
Vice President  
UMS Group, Inc.  
Morris Corporate Center 1  
300 Interspace Parkway, Suite C380  
Parsippany, NJ 07054  
U.S.A.  
[smorris@umsgroup.com](mailto:smorris@umsgroup.com)

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Transmission Capital Project Execution Review**

Dear Mr. Morris:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain UMS Group, Inc. (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.



## 2. Consultant Expertise

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be:

- Steven Morris                      Executive Sponsor
- Jeff Cummings                  Project Manager
- Brett Shaw                        Subject Matter Expert

(collectively referred to as the “Sponsors”).

## 3. Scope of Services and Work Product

The Consultant will:

- (a) carry out an independent study to (i) review Hydro One’s transmission capital project execution process, including with respect to planning, design, project controls and governance, relative to industry standards and the processes used by other large transmission companies, and (ii) assess Hydro One’s execution of its transmission capital project portfolio in terms of cost, scope and schedule variances relative to other large transmission companies (the “Study”);
- (b) discuss the findings and preliminary results of the Study with Torys and Hydro One on a date and at a location to be agreed upon (the “Discussion of Findings”), which shall be no later than **November 30, 2020**, unless otherwise agreed to by the parties;
- (c) if requested by Torys, produce draft and/or final written report(s) detailing the Study’s methodology, analysis performed and the Consultant’s findings and recommendations (the “Report(s)”), which (i) shall be delivered to Torys no later than: **December 31, 2020** for the draft Report and **February 1, 2021** for the final Report, unless otherwise agreed to by the parties and (ii) may be filed by Torys with the Board in connection with the Application; and
- (d) If requested by Torys, provide support during the hearing of Application (“Application Support Services” and, together with the Study, the Discussion of Findings and the Report(s), the “Services”), which may include:
  - (i) assistance in responding to interrogatories applicable to the Report;
  - (ii) appearance at a technical conference to respond to oral questions on the Report;
  - (iii) testifying about the Report as an expert witness either orally or in writing;
  - (iv) responding to undertakings (i.e., written questions during a hearing) on the Report; and

- (v) assistance in connection with the preparation of argument (oral or written) on the issues addressed in the Report.

#### 4. Fees and Invoices

By entering into this Retainer Agreement, the Consultant acknowledges that:

- a) the price for the Consultant to perform the Study and participate in the Discussion of Findings shall be a lump sum, all-inclusive, fixed price of [REDACTED] (net of HST);
- b) the price for the Consultant to prepare and deliver the Report(s) (if requested by Torys) shall be a lump sum, all-inclusive, fixed price of [REDACTED] (net of HST); and
- c) the price for the Consultant to provide Application Support Services (if requested by Torys) will be charged at the following hourly rates:



The table is redacted with black boxes. It appears to have multiple columns and rows, likely detailing different types of services and their corresponding hourly rates.

All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, in accordance with the invoice schedule set out in the Consultant's September 3, 2020 proposal, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
Regulatory Affairs Department  
483 Bay St.  
7th Floor, South Tower  
Toronto, Ontario  
M5G 2P5

with a copy to Torys, to the attention of:

Mr. Jonathan Myers  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[jmyers@torys.com](mailto:jmyers@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority.

## **5. Confidentiality**

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the



Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

## **9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as Schedules 'A' and 'B' hereto.

## **10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services

or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

#### **11. Entire Agreement**


This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

#### **12. Governing Law**

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Sincerely,

TORYS LLP

Per:   
Name: Jonathan Myers

Accepted and agreed to by UMS Group, Inc.

Signed 

Name (please print) STEVEN J. MORRIS  
(I have the authority to bind the Consultant)

## **SCHEDULE 'A'**

### **Rule 13A of the Board's Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

---

<sup>1</sup> Attached as Schedule 'B' herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date .....

\_\_\_\_\_  
*Signature*



79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2 Canada  
P. 416.865.0040 | F. 416.865.7380  
www.torys.com

Arlen K. Sternberg  
asternberg@torys.com  
P. 416.865.8203

Filed: 2021-11-29  
EB-2021-0110  
Exhibit I-22-B1-SEC-48  
Attachment 8  
Page 1 of 9

**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

May 5, 2020

Clearspring Energy Advisors, LLC  
1050 Regent St., Suite L-3  
Madison, WI 53715

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Econometric benchmarking for Hydro One’s planned 2023-2027 combined Distribution and Transmission rate application**

Dear Mr. Fenrick:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Steven Fenrick of Clearspring Energy Advisors, LLC (the “Consultant” or “you”) effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

**2. Consultant Expertise**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsor of the work of the Consultant and the persons who have the relevant expertise will be Mr. Steven Fenrick (the “Sponsor”).



### 3. Scope of Services and Work Product

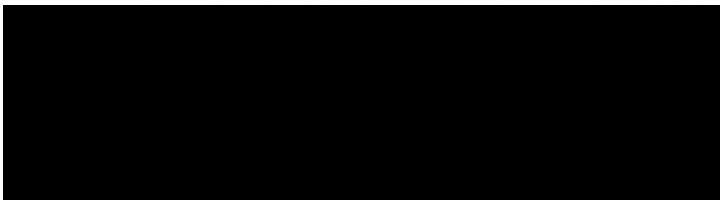
The Consultant will:

- (a) conduct econometric benchmarking research in regards to Hydro One's distribution and transmission businesses, which will likely include research on the total cost benchmarking of Hydro One's distribution and transmission businesses and the total factor productivity (industry productivity) of the transmission business, and may also include research on the total factor productivity (industry productivity) of the distribution business (the "Study");
- (b) present the findings and results of the Study to Torys and Hydro One on a date and at a location to be agreed upon (the "Presentation of Findings");
- (c) if requested by Torys, produce a written report detailing the Study's methodology, analysis performed and the Consultant's findings and conclusions (the "Report(s)"), which may be filed with the Board in connection with the Application; and
- (d) if requested by Torys, provide support during the hearing of the Application and testify before the Board in the Application, in connection with the scope of the services provided hereunder ("Application Support" and, together with the Study, the Presentation of Findings and the Report(s), the "Services").

### 4. Fees and Invoices

By entering into this Retainer Agreement, the Consultant acknowledges that:

- a) the price for the Consultant to perform the Study, deliver the Presentation of Findings, and deliver the Report(s) (if requested by Torys) shall be determined based on the hourly rates set forth in paragraph (b) below and in no event exceed [REDACTED] (net of HST) without prior written approval from Torys or Hydro One (any necessary revisions to be discussed once final scope is determined);
- b) the price for the Consultant to provide Application Support services (if requested by Torys) will be charged at the following hourly rates:



The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
483 Bay St.  
7<sup>th</sup> floor, South Tower  
Toronto, ON M5G 2P5  
Email: regulatory@hydroone.com

and with a copy to Torys, to the attention of:

Mr. Arlen K. Sternberg  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, ON M5K 1N2  
asternberg@torys.com

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority.

## **5. Confidentiality**

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One, and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.



## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under

section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

**9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as Schedules 'A' and 'B' hereto.

**10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

**11. Entire Agreement**

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer



Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

12. **Governing Law**

This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

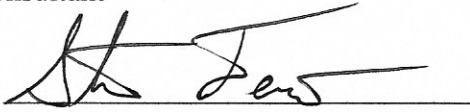
Sincerely,

**TORYS LLP**

Per: 

Name: Arlen K. Sternberg

Accepted and agreed to by Consultant

Signed: 

Name (please print): Steven A. Fenrick  
(I have the authority to bind the Consultant)

**SCHEDULE 'A'**

**Rule 13A of the Board's Rules of Practice and Procedure**

**13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert's area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert's evidence shall, at a minimum, include the following:

- (a) the expert's name, business name and address, and general area of expertise;
- (b) the expert's qualifications, including the expert's relevant educational and professional experience in respect of each issue in the proceeding to which the expert's evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert's evidence relates;
- (d) the specific information upon which the expert's evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert's evidence, a summary of the points of agreement and disagreement with the other expert's evidence; and
- (f) an acknowledgement of the expert's duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

---

<sup>1</sup> Attached as Schedule 'B' herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*



79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2 Canada  
P. 416.865.0040 | F. 416.865.7380  
www.torys.com

Jonathan Myers  
[jmyers@torys.com](mailto:jmyers@torys.com)  
P. 416-865-7532

Filed: 2021-11-29  
EB-2021-0110  
Exhibit I-22-B1-SEC-48  
Attachment 9  
Page 1 of 11

**BY EMAIL**

**CONFIDENTIAL — PRIVILEGED**

September 25, 2020

Concentric Advisors, ULC.  
200 Rivercrest Drive S.E., STE 277  
Calgary, AB T2C 2X5

Attention: Mr. James M. Coyne  
[jcoyne@ceadvisors.com](mailto:jcoyne@ceadvisors.com)

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Productivity Framework Review**

Dear Mr. Coyne:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that, on behalf of and to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Concentric Advisors, ULC. (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

## **1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.



## 2. Consultant Expertise

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be:

- James M. Coyne      Senior Vice President
- Daniel Dane        Senior Vice President
- Bickey Rimal        Senior Project Manager
- Meredith Stone      Project Manager

(collectively referred to as the “Sponsors”).

## 3. Scope of Services and Work Product

The required services include designing a study to (i) provide an independent assessment of Hydro One’s process for identifying, developing, implementing, monitoring and measuring productivity initiatives that will reduce costs while maintaining or improving service quality and work outputs (the “Productivity Framework”), and (ii) compare the Productivity Framework to comparable frameworks from an appropriate peer group (together referred to as the “Study”). More particularly, the Consultant will:

- (a) assess the Productivity Framework in terms of (i) its effectiveness to identify and quantify productivity improvements and initiatives; (ii) its application of baseline data; (iii) its validation and audit process, (iv) the extent to which the identified savings can be considered true productivity gains, and (iv) how productivity is considered in the context of forward looking planning;
- (b) to support the assessment of the Productivity Framework, identify an appropriate peer group of utilities and any information to be collected from them, and compare the Productivity Framework to the frameworks employed by the identified peers, including in particular with respect to the effectiveness of the framework in identifying, measuring, tracking and validating productivity improvements and the relevance of that framework for rate-making purposes;
- (c) discuss the findings and preliminary results of the Study with Torys and Hydro One on a date and at a location to be agreed upon (the “Discussion of Findings”), which shall be no later than **December 9, 2020**, unless otherwise agreed to by the parties;
- (d) if requested by Torys, produce draft and/or final written report(s) detailing the Study’s methodology, analysis performed and the Consultant’s findings and recommendations (the “Report(s)”), which (i) shall be delivered to Torys no later than: **January 11, 2021** for the draft Report and **February 1, 2021** for the final Report, unless otherwise agreed to by the parties and (ii) may be filed by Torys with the Board in connection with the Application; and



- (e) If requested by Torys, provide support during the hearing of Application (“Application Support Services” and, together with the Study, the Discussion of Findings and the Report(s), the “Services”), which may include:
  - (i) assistance in responding to interrogatories applicable to the Report;
  - (ii) appearance at a technical conference to respond to oral questions on the Report;
  - (iii) testifying about the Report as an expert witness either orally or in writing;
  - (iv) responding to undertakings (i.e., written questions during a hearing) on the Report; and
  - (v) assistance in connection with the preparation of argument (oral or written) on the issues addressed in the Report.

#### 4. Fees and Invoices

By entering into this Retainer Agreement, the Consultant acknowledges that:

- a) the price for the Consultant to perform the Study and participate in the Discussion of Findings shall be a fixed price of [REDACTED] (net of HST);
- b) the price for the Consultant to prepare and deliver the Report(s) (if requested by Torys) shall be a fixed price of [REDACTED] (net of HST); and
- c) the price for the Consultant to provide Application Support Services (if requested by Torys) will be charged at the following hourly rates:

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Ms. Eryn MacKinnon  
Hydro One Networks Inc.  
Regulatory Affairs Department  
483 Bay St.  
7th Floor, South Tower  
Toronto, Ontario  
M5G 2P5  
[Regulatory@HydroOne.com](mailto:Regulatory@HydroOne.com)

with a copy to Torys, to the attention of:

Mr. Jonathan Myers  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[jmyers@torys.com](mailto:jmyers@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority.

Hydro One, Torys and the Consultant shall enter into a third-party payor addendum (“Payor Addendum”) to this Retainer Agreement, as set forth in **Schedule ‘C’**, whereby Hydro One assumes payment responsibility for the Services, including any Application Support. In the event Hydro One does not execute the Payor Addendum, Torys shall be the liable party for the fees and expenses of the Consultant set forth in this Retainer Agreement.

## **5. Confidentiality**

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant’s opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the “Confidential Information”). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be. Notwithstanding the foregoing, the Consultant may refer to the following information in materials used to promote its services: (i) the Board’s file number for the Application, (ii) a general description of the nature and scope of the Services performed, and (iii) the time period of the Retainer Agreement; provided that (a) Consultant has provided testimony

before the Board in connection with this Retainer Agreement and (b) such information shall in no way include, reflect or reveal, directly or indirectly, any Confidential Information nor any information that is not available on the public record in the Application.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

## **9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as Schedules 'A' and 'B' hereto.

## **10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services.

## **11. Entire Agreement**

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

## **12. Governing Law**

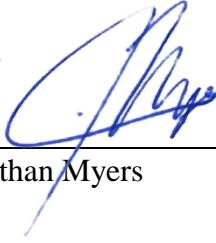
This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Sincerely,

TORYS LLP

Per:

Name: Jonathan Myers



Accepted and agreed to by Concentric Advisors, ULC.

Signed



Name (please print) James Coyne

(I have the authority to bind the Consultant)

## **SCHEDULE ‘A’**

### **Rule 13A of the Board’s Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert’s area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert’s evidence shall, at a minimum, include the following:

- (a) the expert’s name, business name and address, and general area of expertise;
- (b) the expert’s qualifications, including the expert’s relevant educational and professional experience in respect of each issue in the proceeding to which the expert’s evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert’s evidence relates;
- (d) the specific information upon which the expert’s evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert’s evidence, a summary of the points of agreement and disagreement with the other expert’s evidence; and
- (f) an acknowledgement of the expert’s duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

---

<sup>1</sup> Attached as Schedule 'B' herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*



### **SCHEDULE C - THIRD PARTY PAYOR ADDENDUM**

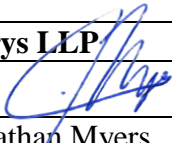

This is an addendum ("Addendum") to the Retainer Agreement between Torys LLP ("Torys") and Concentric Advisors, ULC. ("Concentric"), dated September 25, 2020 (the "Retainer Agreement").

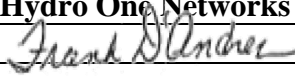
This Addendum is entered into on September 25, 2020 by and between Concentric, Torys and Hydro One Networks Inc. ("Hydro One"). For purposes of this Addendum, each of Concentric and Hydro One and Torys may also be referred to individually as "Party" and collectively as the "Parties."

Hydro One acknowledges the terms and conditions of the Retainer Agreement and agrees to its responsibilities thereunder. Furthermore, the Parties hereby agree to the following additions, modifications and deletions to the payment terms and obligations of the Retainer Agreement. All terms not defined herein shall have the meaning set forth in the Retainer Agreement, as the same may be modified or amended from time to time.

1. Each Party agrees that all Fees for the Services provided to Torys under the Retainer Agreement shall be paid by Hydro One, as directed by Torys and in accordance with the terms of this Addendum.
2. Except for the payment obligations in the Retainer Agreement, Torys and Concentric acknowledge and agree that all of the remaining terms and conditions of the Retainer Agreement shall remain in full force and effect and Torys and Concentric shall continue to comply with them.
3. In the event Hydro One does not pay for the Services after Concentric's good faith attempts to collect, Torys shall pay for the Services.
4. This Addendum shall have a term consistent with the term of the Retainer Agreement. Except as expressly modified by this Addendum, the terms of the Retainer Agreement shall remain in full force and effect.

The Parties have hereby executed this Addendum by their duly authorized representatives on the date set forth above:

Accepted for:	<b>Torys LLP</b>	<b>Concentric Advisors, ULC.</b>
Signature/Date:		
Print Name:	Jonathan Myers	James Coyne
Title:	Counsel	Senior Vice President

Accepted for:	<b>Hydro One Networks Inc.</b>	
Signature/Date:		
Print Name:	Frank D'Andrea	Phone: 416-568-5534
Title:	VP, Reliability Standards and CRO	Fax:

**CONFIDENTIAL — PRIVILEGED**

April 15, 2020

**BY EMAIL**

Mr. Russell A. Feingold  
Vice President, Financial & Regulatory Services  
Black & Veatch Canada Company  
1959 Upper Water St., Ste. 800  
Halifax, Nova Scotia  
B3J 2X2  
[FeingoldRA@bv.com](mailto:FeingoldRA@bv.com)

**Re: Retainer Letter Agreement – Hydro One Networks Inc. – Corporate Cost and Common Asset Allocation and Overhead Capitalization**

Dear Mr. Feingold:

Torys LLP (“Torys” or “we”) represents Hydro One Networks Inc. (“Hydro One”) in connection with its planned 2023-2027 combined Distribution and Transmission rate application (the “Application”) to the Ontario Energy Board (the “Board”).

We confirm that to assist us in providing legal advice to Hydro One in connection with the Application, Torys has agreed to retain Black & Veatch Canada Company (the “Consultant” or “you”), effective as of the date first written above (the “Effective Date”), to provide consulting services as herein described. By signing back a copy of this letter, the Consultant agrees that this letter contains the agreed-upon terms and conditions of its retainer with Torys effective on the Effective Date, subject to amendment by written agreement between the parties (the “Retainer Agreement”).

**1. No Conflict**

The Consultant does not have any conflict of interest or other constraints on its ability to provide expert advice in connection with this Retainer Agreement. You confirm that you are free to provide your services to Torys in connection with Torys’ representation of Hydro One in the Application. You agree that during this engagement you will not provide, directly or indirectly, any services to any other party in connection with the matters at issue in the Application.

## 2. **Consultant Expertise**

The Consultant has been selected to provide consulting services to Torys in connection with the Application as further described in Section 3 below. The sponsors of the work of the Consultant and the persons who have the relevant expertise will be:

- Russell Feingold      Vice President
- John Taylor          Principal Consultant
- Alok Patil             Manager & Chartered Financial Analyst

(collectively referred to as the “Sponsors”).

## 3. **Scope of Services and Work Product**

The Consultant will:

- (a) carry out independent studies to recommend best practice methodologies for:
  - (i) allocating Hydro One’s Common Corporate Costs among the business units that utilize the relevant functions and services (“Cost Allocation”),
  - (ii) allocating Hydro One’s Common Assets among the business units that utilize these assets (“Asset Allocation”), and
  - (iii) distributing an appropriate amount of Common Corporate Costs to capital expenditures through the overhead capitalization rate (“Capitalization”);where the recommended methodologies must be consistent with Board precedents and comply with relevant provisions of the Board’s *Affiliate Relationship Code for Electricity Distributors and Transmitters* (collectively, the Cost Allocation, Asset Allocation and Capitalization studies are hereinafter referred to as the “Studies”);
- (b) present the findings and results of the Studies to Torys and Hydro One on dates and at locations to be agreed upon (the “Presentations of Findings”), which shall be no later than June 1, 2020 for the Cost Allocation study and July 1, 2020 for the Asset Allocation and Capitalization studies, unless otherwise agreed to by the parties;
- (c) if requested by Torys, produce draft and/or final written report(s) detailing the methodologies for the Studies, analysis performed and the Consultant’s findings and conclusions (the “Report(s)”), which (i) shall be delivered to Torys no later than: June 15, 2020 for the Cost Allocation draft Report(s), July 15, 2020 for the Asset Allocation and Capitalization draft Report(s), June 30, 2020 for the Cost Allocation final Report(s), and July 30, 2020 for the Asset Allocation and Capitalization final Report(s), unless otherwise agreed to by the parties, (ii) shall, in the case of the Cost Allocation and Capitalization final Reports only, be updated (if requested by Torys) based on Hydro One’s final plan numbers and

delivered to Torys no later than January 15, 2021, unless otherwise agreed to by the parties; and (iii) may be filed with the Board in connection with the Application; and

- (d) if requested by Torys, provide support during the hearing of the Application and testify before the Board in the Application, in connection with the scope of the services provided hereunder (“Application Support” and, together with the Studies, the Presentations of Findings and the Report(s), the “Services”).

#### 4. Fees and Invoices

By entering into this Retainer Agreement, the Consultant acknowledges that:

- a) the price for the Consultant to perform the Studies, deliver the Presentations of Findings, and deliver and update the Report(s) (if requested by Torys) shall be determined based on the hourly rates set forth in paragraph (b) below and in no event exceed [REDACTED] (net of HST) without prior written approval from Torys or Hydro One;
- b) the price for the Consultant to provide Application Support services (if requested by Torys) will be charged at the following hourly rates:

[REDACTED]

All amounts stated herein are in Canadian dollars.

The Consultant shall direct all invoices relating to Services performed by it under this Retainer Agreement to Hydro One, to the attention of:

Mr. Michael Malinowski  
Senior Manager, Productivity and Corporate Planning  
Strategic Finance | TCT 07  
Hydro One Networks Inc.  
Tel: (416) 345-5835  
Email: [michael.malinowski@HydroOne.com](mailto:michael.malinowski@HydroOne.com)

with a copy to Torys, to the attention of:

Mr. Jonathan Myers  
Torys LLP  
79 Wellington St. W., 30th Floor  
Box 270, TD South Tower  
Toronto, Ontario M5K 1N2  
[jmyers@torys.com](mailto:jmyers@torys.com)

Any disbursements for additional incidentals incurred by the Consultant in relation to this Retainer Agreement must be pre-approved by Hydro One in writing. Hydro One reserves the right to deduct any applicable non-resident withholding taxes from any amounts owing to the Consultant under this Retainer Agreement and remit such amounts to the applicable taxation authority.

## **5. Confidentiality**

All work performed by the Consultant in connection with this Retainer Agreement, including all findings, opinions and conclusions the Consultant reaches in relation to this Retainer Agreement, and any communications relating thereto, are strictly privileged and confidential and shall not be disclosed to any other person or party without the prior written consent of Torys or Hydro One. The Consultant agrees to designate all written communications and material accordingly. The Consultant further agrees to promptly notify Torys in the event that the Consultant receives a request to disclose information relating to this matter, and agrees to cooperate with Torys, to the fullest extent permitted by law, to prevent or limit the disclosure of such material or otherwise preserve the privileged and confidential status of such material.

The Consultant agrees to hold in confidence: (a) all information provided to the Consultant, and (b) the Consultant's opinions to Torys and to Hydro One as they relate to the information, whether the information or opinions are documentary or oral (collectively, the "Confidential Information"). The Consultant will not disclose the Confidential Information to any person unless Torys or Hydro One authorizes you in writing to do so. All documents given to the Consultant in connection with this Retainer Agreement remain the property of Torys or of Hydro One and are held in trust by the Consultant as agent. The Consultant agrees to return these documents on request.

The Consultant will not refer to Torys or to Hydro One, directly or indirectly, in connection with the promotion of its services, without obtaining the prior written consent of Torys or Hydro One, as the case may be.

## **6. Intellectual Property**

Nothing in this Retainer Agreement shall be deemed to transfer, license, assign, permit the use of, or otherwise convey an interest in whole or in part to the Consultant of any intellectual property belonging to Hydro One or any of its representatives or any third party whose intellectual property is in Hydro One's custody or control, and the use by the Consultant of any such intellectual property shall be subject to the prior written approval of Hydro One.

Torys and Hydro One shall at all times have full rights and title to all works prepared, generated or created by the Consultant pursuant to this Retainer Agreement, including without limitation any reports or other documents created by the Consultant, and any related works, modifications or additions thereto (the "Work Product"), and may at all times take possession of or use any completed or partially completed Work Product, notwithstanding any provision, express or implied, to the contrary. Without limiting the generality of the foregoing, Hydro One shall own all intellectual property rights in all Work Product, and the Consultant hereby waives and assigns to Hydro One any such rights, and agrees to give Hydro One and its representatives all assistance as may be reasonably required to perfect such rights including, without limitation, obtaining waiver

of moral rights from any of the Consultant's employees, partners or other representatives. Notwithstanding the foregoing, the Consultant shall retain sole and exclusive ownership of any pre-existing Consultant tools, methodologies, proprietary research and data, together with all intellectual property rights therein (the "Consultant Property"). Consultant grants to Torys and Hydro One a fully paid up, irrevocable, perpetual, non-exclusive, royalty-free license to use the Consultant Property contained within the Work Product for the purposes intended in this Retainer Agreement.

The Consultant expressly warrants that the delivery, sale or use of the Consultant's Services will not infringe any Canadian or foreign patents, trademarks, copyrights, industrial design or other intellectual property rights and the Consultant shall indemnify and save Hydro One harmless from all claims, judgments and decrees that may be entered against Hydro One or its representatives and against all damage, liability, costs and expenses (including legal fees and other attendant costs and expenses) Hydro One incurs by reason of any infringement or claim thereof.

## **7. Termination**

Torys may terminate this Retainer Agreement at any time on written notice to the Consultant. Torys will pay, or will cause Hydro One to pay, for work performed up to the date of the notice of termination. Upon the termination or expiration of this Retainer Agreement, the Consultant shall return to Torys and delete any and all electronic copies the Consultant may have of all documents and materials in its possession relating to the Services or this Retainer Agreement, including all Confidential Information (defined above) and Work Product, whether completed or not. The Consultant shall, upon request, provide Torys with a certificate of an officer of the Consultant certifying such deletion of electronic copies.

## **8. Limitation of Liability**

Except for breach of confidentiality obligations under section 5, gross negligence, willful misconduct, fraud, breach of privacy laws, and the Consultant's obligation to indemnify under section 6 (Intellectual Property), the Consultant's total liability for any claim arising out of the performance of the Services, regardless of the form of claim, will in no event exceed total fees paid to Consultant hereunder and under no circumstances will either party be liable for any damages in respect of any incidental, punitive, special, indirect or consequential loss, even if that party had been advised of the possibility of such damages including, but not limited to, loss of profits, loss of revenues, failure to realize expected savings, loss of data, loss of business opportunity, or similar losses of any kind.

## **9. Independence**

By entering into this Retainer Agreement, the Consultant acknowledges and agrees that the Sponsors have received a copy of Rule 13A of the Board's *Rules of Practice and Procedure* concerning expert evidence, and agree to accept the responsibilities that are or may be imposed on them by that rule with respect to testimony before the Board. A copy of the rule and the relevant form are attached as Schedules 'A' and 'B' hereto.

## **10. Responsibility Statement**

The Consultant agrees that the Services provided for herein will be performed in a timely, competent, professional manner in accordance with recognized professional consulting standards for similar services to be performed by a leading consulting advisory firm, and that adequate qualified personnel will be assigned for that purpose. If, during the performance of the Services or prior to the Board's issuance of final, non-appealable order(s) disposing of all relevant relief sought in the Application, such Services prove to be faulty or defective by reason of a failure to meet such standards, the Consultant agrees that upon prompt written notification from Torys, such faulty or defective portion of the Services will be redone at no cost to Torys or Hydro One, up to a maximum amount equivalent to the cost of the Services rendered under this Retainer Agreement, or, at Torys' request, the Consultant will refund an amount equal to the amount paid for the faulty or defective portion of the Services. The obligations and representations contained in this Article 10 are Consultant's sole warranty and guarantee obligations and Client's exclusive remedy in respect of quality of the Services. Except as provided in this Article, Consultant makes no other warranties or guarantees, express or implied, relating to Consultant's services and Consultant disclaims any implied warranties or warranties imposed by law including warranties of merchantability and fitness for a particular purpose. This Article governs, modifies, and supersedes any other terms in this Agreement which may be construed to address warranties or guarantees or the quality of the Services.

#### 11. Entire Agreement

This Retainer Agreement, together with all Schedules attached hereto and any agreements and other documents to be delivered pursuant to this Retainer Agreement, constitute the complete agreement between Torys and the Consultant or their respective agents with respect to the subject matter hereof and supersedes any and all prior agreements and understandings. This Retainer Agreement may be amended only in a written agreement that refers to this Retainer Agreement and is signed by both parties.

#### 12. Governing Law


This Retainer Agreement shall be construed and otherwise governed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein.

Sincerely,

TORYS LLP

Per:

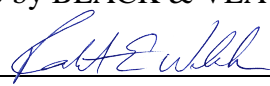
Name:

  
Jonathan Myers

Accepted and agreed to by BLACK & VEATCH CANADA COMPANY

Signed

Name (please print)

  
Robert E. Welch

(I have the authority to bind the Consultant)

Reviewed KAR 4-16-2020

Reviewed by PM(J. Taylor) 04/16/2020. *JDT*



## **SCHEDULE ‘A’**

### **Rule 13A of the Board’s Rules of Practice and Procedure**

#### **13A. Expert Evidence**

13A.01 A party may engage, and two or more parties may jointly engage, one or more experts to give evidence in a proceeding on issues that are relevant to the expert’s area of expertise.

13A.02 An expert shall assist the Board impartially by giving evidence that is fair and objective.

13A.03 An expert’s evidence shall, at a minimum, include the following:

- (a) the expert’s name, business name and address, and general area of expertise;
- (b) the expert’s qualifications, including the expert’s relevant educational and professional experience in respect of each issue in the proceeding to which the expert’s evidence relates;
- (c) the instructions provided to the expert in relation to the proceeding and, where applicable, to each issue in the proceeding to which the expert’s evidence relates;
- (d) the specific information upon which the expert’s evidence is based, including a description of any factual assumptions made and research conducted, and a list of the documents relied on by the expert in preparing the evidence;
- (e) in the case of evidence that is provided in response to another expert’s evidence, a summary of the points of agreement and disagreement with the other expert’s evidence; and
- (f) an acknowledgement of the expert’s duty to the Board in **Form A** to these Rules, signed by the expert.

13A.04 In a proceeding where two or more parties have engaged experts, the Board may require two or more of the experts to:

- (a) in advance of the hearing, confer with each other for the purposes of, among others, narrowing issues, identifying the points on which their views differ and are in agreement, and preparing a joint written statement to be admissible as evidence at the hearing; and
- (b) at the hearing, appear together as a concurrent expert panel for the purposes of, among others, answering questions from the Board and others as permitted by the Board, and providing comments on the views of another expert on the same panel.

13A.05 The activities referred to in **Rule 13A.04** shall be conducted in accordance with such directions as may be given by the Board, including as to:

- (a) scope and timing;
- (b) the involvement of any expert engaged by the Board;
- (c) the costs associated with the conduct of the activities;

(d) the attendance or non-attendance of counsel for the parties, or of other persons, in respect of the activities referred to in paragraph (a) of **Rule 13A.04**; and

(e) any issues in relation to confidentiality.

13A.06 A party that engages an expert shall ensure that the expert is made aware of, and has agreed to accept, the responsibilities that are or may be imposed on the expert as set out in this **Rule 13A** and **Form A**<sup>1</sup>.

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<sup>1</sup> Attached as Schedule 'B' herein.

**SCHEDULE 'B'**

**FORM A**

Proceeding: .....

**ACKNOWLEDGMENT OF EXPERT'S DUTY**

1. My name is ..... (*name*). I live at ..... (*city*), in the ..... (*province/state*) of .....
2. I have been engaged by or on behalf of ..... (*name of party/parties*) to provide evidence in relation to the above-noted proceeding before the Ontario Energy Board.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
  - (a) to provide opinion evidence that is fair, objective and non-partisan;
  - (b) to provide opinion evidence that is related only to matters that are within my area of expertise; and
  - (c) to provide such additional assistance as the Board may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date.....

\_\_\_\_\_  
*Signature*