

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-01:

In the Spring of 2025, NS Power suffered a cybersecurity incident.

a) Did this incident impact NSPML's operations, assets or information technology?

b) Are any proposed O&M costs for 2026 related to or affected by this cyber incident?

If so, please provide a quantified breakdown.

Response IR-01:

a) The cybersecurity incident experienced in the Spring of 2025 by NS Power did not affect the operations of NSPML's assets. However, with respect to information technology, much of NSPML's data was not accessible for a period. Some data has since been made accessible and NSPML continues to work with the corporate Emera team to complete accessibility efforts.

b) There are no proposed NSPML O&M costs for 2026 related to or affected by this cyber incident.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-02:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

NSPML states: “NSPML will be completing the Cable Protection Project in 2026 (pending approval); with the next marine inspection survey over the full length of the cables forecasted for 2027.” Please explain why it is necessary to conduct a new marine survey in the year immediately following the proposed cable protection project.

Response IR-02:

Section 5.1.2 of CIGRE technical brochure TB825¹ Maintenance of HV Cable Systems (Jan 2021) states:

[REDACTED]

Further, Section 5.1.2.1 recommends:

[REDACTED]

¹ CIGRE Technical Brochure 825, Maintenance of HV Cable Systems, January 2021.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 [REDACTED]
2 [REDACTED]
3
4 The history of cable inspection surveys for Maritime Link has been provided in the Application,
5 indicating that the last submarine cable and protection inspection survey over the full length of the
6 cables was performed at the end of 2024. In 2025, the intent is to perform a partial survey [REDACTED]
7 [REDACTED] In 2026, there is no inspection survey planned outside of the fairly limited survey
8 work scope required as part of the Cable Protection Project though, again, a partial [REDACTED]
9 survey may be warranted as a function of environmental conditions in the year.

10
11 NSPML has performed regular and frequent full route surveys since installation. These surveys,
12 coupled with targeted surveys, identified and monitored the areas of risk targeted for protection
13 works. NSPML is aware of the potential sources of risk to the cables and considers it prudent to
14 inspect the full length of the cable in 2027 as the vast majority of the route will not have been
15 surveyed in 3 years by that time; 3 years represents an increase in the period between surveys
16 (previous longest interval between surveys was 2 years).

17
18 An important additional benefit of performing the inspection survey in the near window following
19 the Cable Protection Project is the acquisition of data to assess the performance of the recently
20 placed cable protection since its installation and, should issues be identified that require
21 remediation, a resolution can be actioned in a timely manner. This strategy is in keeping with
22 NSPML's findings from the multiple surveys performed to date, the risks identified as a result and
23 is in keeping with CIGRE TB825 guidance.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-03:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 7

NSPML states: “The global and local vessel markets are constantly changing in terms of availability and cost for suitable vessels and specialized equipment.” Please detail the steps NSPML is taking to mitigate these risks.

Response IR-03:

The context of the quote is in relation to NSPML’s limitations with respect to predicting costs of upcoming submarine cable inspection surveys. NSPML has relatively little market power to influence the availability of suitable vessels and specialized equipment in the local area and is largely unable to mitigate the risks that these cannot be sourced locally; it has benefitted to date in early operations mainly due to industry adjacencies within Atlantic Canada, related primarily to offshore oil and gas activity. Offshore wind development may be another industry adjacency of interest into the future. NSPML regularly engages with its marine network to stay abreast of emerging trends, best practices and opportunities.

NSPML implements proactive strategies in its procurement approach to attract local contractors to NSPML’s work; this has been an important factor in mitigating survey costs to date. Should NSPML be required to contract for vessels that are not locally based, this would lead to higher transit costs. Furthermore, should NSPML be required to import a foreign vessel to perform the work, there would also be additional costs, complexity and uncertainty under the requirements of the Coastal Trade Licensing process.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 In addition to improving the likelihood of soliciting competitive proposals, engaging local
2 companies builds relationships with local vendors which has potential long-term value. NSPML
3 actively seeks to engage local companies through the procurement process by posting
4 Expressions of Interest (EOI) to locally monitored forums and sending requests for proposals
5 (RFPs) to known entities.

6
7 NSPML is flexible in its survey planning and scheduling allowing proponents to offer proposals
8 in alternative windows that align with their operational availability. This increases the likelihood
9 of securing assets and derisks limited availability. This approach aligns well with consideration
10 of [REDACTED]

11 [REDACTED]

12 [REDACTED]

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-04:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 8

NSPML states: “NSPML will be renewing its Long-Term-Service-Agreement (“LTSA”) relating to converter station contingency planning and operational support in 2027 with Hitachi and negotiations are presently planned to commence in 2026. This is a material contract and, until contract negotiations are well underway, the cost of the LTSA in 2027 is unknown.”

- a) Please define “material”, including any contractual parameters or cost thresholds used to classify a contract as material.
- b) Please explain why the change in costs (not the total cost) from the existing LTSA already embedded in NSPML’s operating costs, to the new LTSA is considered “material”.
- c) Please explain why NSPML is unable to estimate the costs for the renewed LTSA within a reasonable range based on the 2025 costs for the existing LTSA.

Response IR-04:

- a) Materiality for accounting purposes differs depending on the purpose/process. NSPML used the word “material” to mean significant to NSPML rather than in an accounting sense. The LTSA is a contract that maintains a strong tie and an important relationship for NSPML to Hitachi, the OEM for the specialized HVDC converter and related equipment. At a value of >\$[REDACTED] on a nominal O&M budget of \$20M/year, this is one of NSPML’s more significant contracts and a important one in the context of cost containment from period to period and into the long term. Furthermore, this is a multi-year contract, one that provides some measure of year-to-year cost stability with respect to

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 contracted labour supply for NSPML within the period of the agreement but does not
2 protect from step changes from one contract period to the next.

3
4 b) NSPML had not stated that the change in the contract costs would be “material”; [REDACTED]

5 [REDACTED]

6 [REDACTED]:

7 • NSPML’s current contract with Hitachi is commensurate with experience to date and
8 assessment of operational risks and requirements for the period of the agreement.
9 NSPML will continue to assess the need for scope changes at the outset of every
10 procurement process including this contract; such changes may be driven by the work
11 required in the period, resource factors, operational risk assessments and other
12 considerations. As it has since 2018, NSPML expects the contract to evolve over time
13 resulting from, and in, scope changes from period to period. For instance, in the
14 interest of cost containment for the current contract period, and aligned with operational
15 risk considerations, NSPML did not include the provision of On-Site Engineering
16 resource(s) when it executed the Hitachi LTSA contract in Q1 2024. And so, while
17 embedded on-site OEM coverage is not a need at this instant, operational
18 considerations, maintenance requirements, resource constraints and needs, or other
19 factors may change this view, and such a requirement would likely result in a material
20 cost increase under the contract.

21 • As discussed in NSEB IR-07, world markets are experiencing fluctuations as a result
22 of US tariffs and future policy decisions remain uncertain. It has become increasingly
23 difficult for suppliers to forecast pricing given the changes in imposed tariffs and
24 currency fluctuations. As Hitachi is a global company, these changes and risks over
25 the period of an agreement have and will impact the price of services, materials and
26 equipment, all of which is supplied under this contract.

27 • While the contract is largely labour-based, [REDACTED]
28 [REDACTED] there are elements such
29 as the example noted above, that will impact the scope and scale of the contract. All

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 of these elements will also be a function of Hitachi's risk perception with respect to its
2 resource pool, competition and other dynamics within the wider technical industry that
3 will play a role in defining and costing the contract.

4
5 c) NSPML's experience in operations continues to grow and it's operating outlook
6 evolves; accordingly, it is noteworthy that 2025 is the first full operating year for these
7 assets without the OEM's warranty coverage, a circumstance that has placed the full
8 cost responsibility for resources, whether labour or materials, and for addressing
9 corrective maintenance with NSPML.

10
11 NSPML is obliged to maintain high availability of the Maritime Link. Performance of
12 these assets has been world class to date; however, as is typical for new assets,
13 maintaining high availability performance may become more challenging over time,
14 adjusting the asset and operational maintenance and risk profiles. The evolution of
15 these elements needs to be closely monitored from period to period and NSPML must
16 ensure it has flexibility and resources to support the performance requirements.

17
18 For all the reasons outlined in this response, the existing Hitachi contract will evolve
19 to align with operational needs and that will likely result in changes to costs that cannot
20 be accurately predicted at this moment. It is appropriate in the context of its
21 obligations, that NSPML maintain its ability to alter delivery of O&M activities as
22 required in accordance with good utility practice from year to year in an effort to
23 maintain the ongoing high performance of the Maritime Link. NSPML will continue
24 to assess its needs over the current period to inform its discussions with Hitachi.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-05:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 8

NSPML states: “NSPML has not completed its assessment for planned transmission line and related inspection and maintenance work into 2027 and beyond following recent years’ activities. This work will be completed through the remainder of 2025 and into 2026 with refinements to the future work scope and timing established as part of normal asset management planning activities. Estimating costs beyond 2026 in advance of completing the appropriate assessment work is both premature and subject to high uncertainty at this time.”

- a) Please confirm that the transmission infrastructure in question is NSPML’s non-marine infrastructure.
- b) Please identify each element of existing uncertainty relating to transmission line and related inspection and maintenance work in 2027 and 2028 and discuss the degree of uncertainty associated with each element.
- c) Please explain why “assessment for planned transmission line and related inspection and maintenance work into 2027 and beyond” is not part of NSPML’s Long-Term Asset Management Plan (LTAMP).
 - i. If this work is part of NSMPL’s LTAMP, please identify specifically where it is identified in Attachment 2 of the application.
- d) Please describe how NS Power conducts its assessments for planned transmission line and related inspection and maintenance work.
 - i. How often does NS Power conduct these assessments?

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Response IR-05:

a) Confirmed.

b) NSPML's transmission line maintenance program mainly consists of inspections, execution of vegetation management, and corrective maintenance. The table below provide commentary on the degree of uncertainty regarding transmission line and related maintenance and inspection work:

Elements	Status of program	2027	2028
Aerial Inspection	Program is in place – has been used for a number of years. Uses a contractor for helicopter operation and NSPML personnel for inspections.	Planned for 2 campaigns per year, with option for 3 rd campaign as required. Low uncertainty as this is generally a low cost element of the program and has been in place for a number of years. Limited supplier pool.	
Drone Inspection	Started in 2024 – plan in place, but limited history. Uses contractor(s) to perform inspections and process imagery. Nominally planning for 100% inspection of all structures over two years in current outlook.	New contract needed starting for work in 2026. There remains uncertainty in terms of costing going forward and final scope of inspections each year.	
LiDAR Survey	Generally limited history. Latest survey completed in 2024; prior survey during ML Project phase prior to vegetation clearing. Plan in place; nominally planning for LiDAR every 2 nd year in current outlook. Uses contractor to perform survey. LiDAR data from 2024 processing complete by service provider. Currently being assessed by NSP resources.	No survey planned.	New contract(s) needed for 2026 work and beyond. There is medium uncertainty as the historical cost is considerably higher than aerial inspections, and NSPML has limited cost history. LiDAR data assessment to be determined.
Vegetation management planning & execution	Plan established for NS. Plan in development for NL, may need additional 3 rd party support.	High uncertainty due to plan status and new contract is needed for work starting in 2026.	

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

	Generally good cost history for previous VM approach but history may not be indicative of the future. Uses contractors to execute vegetation management activities. The contractor pool for Newfoundland work scope is small with limited competition. NSPML worked diligently with market proponents to optimize costs and scope issuing multiple RFPs in early operations and using two contractors over the period.	
Corrective maintenance	Small backlog of minor items currently, but deficiencies are subject to identification as part of inspection program. Uses contractor to perform TL corrective maintenance.	There remains uncertainty as corrective work is identified during future inspections and thus is not yet identified, assessed and addressed year over year with variability. New contract is needed for corrective work starting in 2026.

c) These activities are part of NSPML's LTAMP. Please refer to NSEB IR-31.

d) NSPML received the following summary description from NS Power regarding how they conduct their transmission line assessments:

The objective of the transmission inspection program is to ensure the integrity of NS Power's power system, compliance with relevant regulations, and the necessary due diligence regarding public safety. The program identifies deficiencies and deterioration which, when corrected, will improve system reliability and/or public safety. Typical methods of transmission inspection include foot patrols, drone inspections, helicopter patrols, and LiDAR surveys. The combination of inspection methods and the frequency of specific approaches applied to each line is determined based on factors including line/structure criticality (including NERC lines), accessibility, and system performance, etc. Frequency can range from annual helicopter patrols on NERC lines, to 3-year cycle foot patrols, to longer cycle transmission wood pole assessment on an approximately 10-year cycle. More targeted or specialized inspections such as detailed steel inspections or climbing inspections may be undertaken should circumstances require additional condition insights. Ultimately, these inspections all collect information on transmission assets and

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 *vegetation to identify deficiencies and overall condition of structures, conductor, and*
2 *ROWs. This information obtained via inspections is used as a key input to understand*
3 *transmission asset and ROW risk and target necessary mitigation measures.*

4
5 *NS Power uses a risk-based approach for mitigating issues identified on its transmission*
6 *line assets. Asset deficiencies documented during these inspections are assessed for*
7 *prioritization of corrective actions, as needed. Depending on the severity, deficiencies may*
8 *require short term mitigation on an urgent basis to ensure ongoing reliable operation or*
9 *may be consolidated into a planned capital project for a future year. Such projects would*
10 *follow NS Power's typical risk prioritization approach using condition and criticality,*
11 *consistent with its overall asset management strategy. Subject to the nature and scope*
12 *required, work may be capitalized or expensed as appropriate.*

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-06:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Pages 8-9

NSPML states: “In addition to the items listed above, with Newfoundland & Labrador Hydro still in early stages of normal operations after commissioning of the Labrador Island Link (“LIL”) in April of 2023 and approaching final 900MW testing for the LIL, NSPML and NLH are working through a commercial exercise to align operating practices and maintenance of the overall components of the full Lower Churchill Project 1 (specifically the Muskrat Falls Hydro Facilities, the Labrador Transmission Assets, the Labrador Island Link and the Maritime Link). This work is expected to be completed in 2026 and may also have an impact on future assessments.”

- a) Please explain specifically how Newfoundland & Labrador Hydro (NLH) operating practices and maintenance associated with the Muskrat Falls Hydro Facilities, the Labrador Transmission Assets, and the Labrador Island Link impact NSPML’s costs associated with O&M practices on its own assets.
- b) Please confirm that the O&M practices applied by NSPML over the Maritime Link are consistent with “good utility practices”.
- c) Please provide an estimate of the annual O&M costs incurred by NSPML in each of 2022, 2023, and 2024 for NSPML’s engagement with NLH about the operation and maintenance of the totality of the Lower Churchill Project assets.
- d) Is NS Power involved in any of the discussions with NLH about the operation and maintenance of the Lower Churchill Project assets? Is so, please describe how it is involved and explain how its participation differs from that of NSPML.
- e) Is the NS Power System Operator engaged with NLH about final 900 MW testing for the Labrador Island Link (LIL)? If so, please explain how it differs from NSPML’s engagement on the same issue.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

f) How does final 900 MW testing for the LIL impact NSPML's O&M practices?

Response IR-06:

a) For clarity, the “commercial exercise” referenced in the Application refers to the calculation and payment of an adjustment amount under Section 5.5(b) of the Joint Operations Agreement (JOA), which is referred to as the “LTAMP true-up”. This will feed into the Supplemental Energy calculation under the Energy and Capacity Agreement (Schedule 4), the “SE true-up”. These commercial true-ups require both parties to prepare an In-Service LTAMP and associated In-Service LTAMP Cost Estimate. Among other things, the exercise will require the parties to agree on a sufficient degree of commonality in their estimates and methodology to render them comparable, as well as on cost inclusions (or resolve through dispute resolution). Please also refer to NSEB IR-031 for more information.

Outside of the true-ups to be resolved, the parties coordinate closely through the Joint Operations Committee (JOC) constituted under the JOA, and through the regular and ongoing procedures set out in that Agreement. Informally, the parties also continue to remain engaged on a regular basis whether through technical and site related matters, executive engagement, and other discussions and business relationships across most business functions as two utility operators and operating partners in Newfoundland & Labrador that are literally and figuratively interconnected. Through these mechanisms, the parties share best practices, operating experience, and other information that can inform their individual operating activities and associated costs.

Under the Joint Operations Agreement (JOA), NSPML is obliged to operate and maintain the Maritime Link in the “Required Condition” over the term of the agreement. Considerations relevant to the Required Condition are demonstration of Good Utility

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 Practice for a 50-year, low cost, reliable transmission asset, the Long Term Asset
2 Management Plan and any O&M standards adopted by the JOC.

3
4
5 b) Confirmed. As there is a spectrum of good utility practices and as factors adjust over time
6 (e.g., asset age, performance, etc.), the Company will continue to review and, as deemed
7 appropriate, make adjustments in accordance with the requirements.

8
9 c) Please refer to NSEB-IR-031 (c).

10
11 d) NSPML is the lead in engagement with NLH about the operation and maintenance of the
12 Lower Churchill Project assets and represents Emera on the Joint Operations Committee
13 (JOC) pursuant to the Joint Operations Agreement (JOA). Among other things, the JOA
14 coordinates the operations and maintenance of the LCP Transmission Assets focused on
15 long-term, reliable operations.

16
17 NSP is primarily engaged with NLH in the context of the Interconnection Operators
18 Agreement (IOA), the Energy and Capacity Agreement (ECA) and the Energy Access
19 Agreements (EAA) and may engage with NLH with respect to maintenance of the Lower
20 Churchill Project assets in that context. NS Power is not a member of the Joint Operations
21 Committee and does not participate in JOC meetings or activities, however, information
22 arising from the JOC that is relevant to NS Power is shared by NSPML as appropriate
23 through various channels.

24
25 e) The NS System Operator (NSSO) has long term experience and relationship with the New
26 Brunswick Power System Operator (NBSO), which is the Maritime Region's Reliability
27 Coordinator for the Northeast Power Coordination Council (NPCC). It is engaged in
28 testing in so far as the electrical systems in NL and NS must be coordinated and operated

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 in a manner that permits the 900 MW testing for the LIL without risking any regional
2 system disruption should a trip of the 900MW power delivery unexpectedly occur during
3 the test. While NSPML does not play an official role in coordinating the test between the
4 region's Reliability Coordinator, the NSPSO and the Newfoundland and Labrador System
5 Operator (NLSO), NSPML has and continues to be involved in the context of assisting and
6 enabling coordination as appropriate to our system understanding at the time.

7
8 NSPML does remain apprised of the final 900MW LIL test status and supports the NLH
9 and the system operators as appropriate. NSPML's Maritime Link functionality and
10 availability is also a key component of the coordinated effort, as its availability is critical
11 to the ability of NLH to conduct the test (providing an export path for a portion of the
12 energy during testing) and in terms of dealing with any potential anomalies during the
13 testing period.

- 14
15 f) The 900 MW testing for the LIL is not anticipated to impact NSPML's O&M practices; it
16 is however a key milestone that remains outstanding for NLH in delivery of the Lower
17 Churchill Project in accordance with it's Basis of Design, which is a contractual obligation
18 for NLH under the Commercial Agreements. This was referenced in the context of the
19 anticipated conclusion of the noted commercial exercise.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **Request IR-07:**

2
3 **IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29**

4
5 **Page 9**

6 **NSPML states: “Another current material uncertainty relates to geo-political risks such as**
7 **unpredictable tariffs which have been impacting many Canadian businesses. While NSPML**
8 **is not directly affected at this time, some of its material contracts are European based, which**
9 **could be affected depending on the impact the tariffs have on the global economy.”**

10 **a) Are these risks being addressed and included in revenue requirements in NS Power’s**
11 **upcoming general rate application?**

12 **i. If so, please explain how these risks are being addressed in that application.**

13 **b) Please explain how NSPML’s material contracts would be negatively impacted by**
14 **American tariffs given the Canada European Trade Agreement and Canada-UK**
15 **Trade Continuity Agreement.**

16
17 **Response IR-07:**

18
19 **a) NSPML is not aware of risk management particulars relating to any pending NS Power**
20 **regulatory applications.**

21
22 **b) NSPML is in a niche, complex subsea cable industry with suppliers all over the world,**
23 **primarily Europe. It also engages with global suppliers, such as with the HVDC Converter**
24 **agreement which would have a deep and complex supply chain. NSPML’s concerns**
25 **regarding geo-political risk primarily relate to both impacts to suppliers as a result of the**
26 **American Tariffs and foreign currency.**

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 NSPML has taken these risks into consideration when trying to accurately reflect costs (as
2 it would relate to a multi-year assessment) which are years away while also keeping in
3 mind that global trade policies continue to change regularly. While NSPML takes steps to
4 mitigate foreign currency risk on large contracts (i.e. hedging), there is still a risk of
5 increased costs as a result of the timing of locking in contracts (i.e. timing of Marine
6 Survey), the status of foreign currency at that time, and the ability to hedge. Suppliers also
7 need to account for variable tariffs being applied. Therefore, NSPML is monitoring the
8 geo-political environment as it could impact the industry in general and in turn impact
9 material contracts. This is one of the factors as to why NSPML did not do a multi- year
10 assessment in 2026, pricing is such a variable risk at this point in time and would be
11 premature and not likely accurate. Such material over/under-estimates as articulated in the
12 application introduces excessive financial implications given the operational limitations
13 NSPML has.

14
15 NSPML's tariff related concerns are also shared by its suppliers, with NSPML's more
16 recent experiences seeing suppliers adding specific tariff related language to contracts in
17 an effort to pass along such tariff risks.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-08:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 9

NSPML states: “The above items include material undertakings with potential for large uncertainty relative to the relatively small variable portion of NSPML’s Assessment.” If the variable portion is a relatively small portion of the NSPML assessment, please explain why this doesn't lower the risk associated with estimated costs for these items in a multi-year assessment filing.

Response IR-08:

Of NSPML’s \$198.7 million 2026 Assessment, ~89% of costs are primarily fixed financing costs, while variable portion primarily relates to OM&G, which accounts for \$22 million (11%) of the total assessment and is the primary driver in variances to approved assessments and ROE. While OM&G is a relatively small percentage of NSPML’s Assessment, the material contracts which make up a large portion of OM&G (during years in which they occur) are not confirmed beyond 2026 as a result of the timing of procurement, negotiations and occurrence of work. For example, as mentioned in the 2026 Assessment, in the case of Marine Survey contracting, with vessel availability (demand) becoming less predictable, it is challenging to estimate the projected 2027 cost with a reasonable level of accuracy at this time, which is concerning given the significance of the contract (\$[REDACTED] in 2024) as compared to the total OM&G. For additional context, if NSPML normalized its 2026 OM&G to include the full marine survey using the total 2024 survey cost as an example, total OM&G would be [REDACTED] in 2026, of which [REDACTED] would be the marine survey, this represents [REDACTED] of total OM&G spend alone. While some OM&G items could be managed and forecasted with reasonable accuracy over multiple years, the more material contracts create more risk as a result of the timing of NSPML’s procurement cycle and the impact

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

- 1 cost variances on these larger contracts could have on NSPML (either positive or negative). Please
- 2 also see CA IR-01.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-09:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Pages 7-9

NSPML states “some material elements of O&M costs cannot be accurately assessed several years in advance because of the market complexity, uncertainty and other factors”.

- a) Please explain how NSPML is positioned differently than NS Power in its ability to propose multi-year assessments in terms of the complexity of its operations and the limited type of assets it operates compared to NS Power.
- b) Please provide the final cost of the 2024 marine survey and also provide your response to NSUARB IR-6(d) in Matter M11791 (2025 cost assessment application) about the updated estimate of costs for this marine survey.
- c) Please provide the forecast and actual O&M costs from 2020 to 2024, inclusive, in table format.
- d) Please provide the actual annual costs incurred by NSPML in each of the 2022, 2023, 2024, and 2025 cost assessment applications, of NSPML’s regulatory, legal, and consulting expenses, as well as intervenor legal and consulting costs.
- e) With respect to Transmission, p. 8, lines 16-22, please explain specifically how NSPML’s O&M costs have any greater degree of uncertainty than NS Power’s O&M costs for its transmission lines.

Response IR-09:

- a) The primary difference between NSPML and NSPI with regards to being able to propose multi-year assessments is that NSPML is significantly smaller than NSPI- referring purely from an annual cost of operations perspective, and NSPML bears relatively more risk with regards to annual cost variances, as NSPML is more static in its ability to manage costs.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

For context, NS Power's actual 2024 annual revenue requirement was ~\$1.5 billion compared to NSPML's ~\$161 million. Approximately 89% of NSPML's annual Assessment is fixed financing related costs, with 11% or ~\$22 million representing OM&G (actual NSPI 2024 OM&G was \$328 million as compared to NSPML's \$19.3 million). Some of NSPML's larger single contracts make up [REDACTED] of it's total OM&G budget. In turn, any OM&G cost variance in NSPML could create a material impact to NSPML. Please see CA IR-1.

b) The total marine survey cost was [REDACTED]

c) Please see table below for approved and actual O&M costs from 2020-2024.

Description	2020		2021		2022		2023		2024	
	Approved	Actual	Approved	Actual	Approved	Actual	Approved	Actual	Approved	Actual
Maintenance & Inspection	9.3	8.7	8.6	9.5	8.4	8.9	6.8	6.6	8.5	6.9
Labour & Administration	6.9	6.8	8.3	6.9	7.4	7.5	7.2	7.1	8.6	7.8
Insurance	2.2	2.7	3.0	3.1	3.8	3.5	4.0	3.9	4.6	4.2
Independent Engineer	0.3	0.1	0.3	0.1	0.3	0.2	0.3	0.2	0.3	0.2
Environmental Assessment	0.4	-	0.3	0.1	0.3	0.1	0.2	0.2	0.2	0.2
Contingency & Escalation	1.5	-	1.0	-	0.2	-	-	-	-	-
Total	20.6	18.3	21.5	19.7	20.4	20.2	18.5	18.0	22.2	19.3

d) Total legal, regulatory and related consulting costs are as follows:

Description	2022	2023	2024	2025 (per Assessment)
Legal	0.6	0.5	0.6	0.8
Regulatory	0.6	0.4	0.8	0.8
Consulting	0.1	0.1	0.3	0.1
Total	1.3	1.0	1.7	1.7

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

- 1 e) NSPML has recently shifted from climbing inspections to drone inspections and is still in
2 the assessment stage of planning for 2026, 2027 and beyond, thus contributing to cost
3 uncertainty; whereby NS Power is mature in its operations with long standing maintenance
4 programs and practices. NSPML has also recently transitioned its approach to vegetation
5 management in Nova Scotia and, similar to the change in its inspection process, experience
6 is required to better inform future operational requirements.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-10:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 10

Please show NSPML's calculations for the 2026 depreciation expense of \$57.2 million.

Response IR-10:

Please see table below for detail on the 2026 depreciation amount of \$57.2 million. It was assumed the 2026 additions were in service mid-year, therefore included half a year of depreciation.

Prior year Depreciation	56.6
2026 Additions	33.5
Estimated remaining life	30
Estimated depreciation per year	1.1
2026 Assessment (½ year)	0.6
Total 2026 Depreciation	57.2

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-11:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 10 (lines 10-15) and Page 20 (lines 17-24)

Please set out in table format, the proposed invoicing to NS Power throughout 2026, including separate columns for 1) the monthly assessments for the 2026 cost assessment; 2) the semi-annual assessments for the FLG2; and 3) a Total column.

Response IR-11:

Please see table below.

Month	2026 Base Assessment	2026 FLG2	Total
Jan-26	13,250,000.00		13,250,000.00
Feb-26	13,250,000.00		13,250,000.00
Mar-26	13,250,000.00		13,250,000.00
Apr-26	13,250,000.00		13,250,000.00
May-26	13,250,000.00	21,129,903.37	34,379,903.37
Jun-26	13,250,000.00		13,250,000.00
Jul-26	13,250,000.00		13,250,000.00
Aug-26	13,250,000.00		13,250,000.00
Sep-26	13,250,000.00		13,250,000.00
Oct-26	13,250,000.00		13,250,000.00
Nov-26	13,250,000.00	18,534,538.37	31,784,538.37
Dec-26	13,250,000.00		13,250,000.00
Total	159,000,000.00	39,664,441.74	198,664,441.74

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-12:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 11, Table 2: Operations & Maintenance Forecast – 2026 vs 2025

Please provide a revised version of the Table to include an additional column showing 2025 costs to date, and an additional column to show 2024 actual costs.

Response IR-12:

Please see table below:

Description	2026	2025 approved	2025 (as at July 31)	2024 Actual
Maintenance & Inspection	7.7	6.8	1.6	6.9
Labour & Administration	9.5	8.6	5.3	7.8
Insurance	4.5	4.6	2.3	4.2
Independent Engineer	0.3	0.3	0.1	0.2
Environmental Assessment	-	0.1	-	0.2
Total	22.0	20.4	9.3	19.3

Note: Maintenance and Inspection activities are forecasted to occur in Q3 and Q4 2025.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-13:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 11, Table 2: Operations & Maintenance Forecast – 2026 vs 2025

Note 1 to Table 2 of the application states: “Converters and substation operations, marine surveillance, and service agreements for asset maintenance programs have been aggregated to protect against disclosure of commercially sensitive information.” Please provide the projected 2026 and actual 2025 “maintenance and inspections” costs for each of these items on a confidential basis.

Response IR-13:

Please see table below. Please note, the 2025 actuals for the year are not yet available, however NSPML does not expect a material change to the overall total.

Description	2026	2025 (approved)
Converters & substations		
Transmission & inspection		
Marine Surveillance		
Total	7.7	6.8

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-14:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 11

NSPML states: “As anticipated in the 2025 Assessment Application, a larger scope of vegetation management activities is forecasted to be required in 2026 as compared to 2025, increasing the cost in 2026 by approximately \$0.5 million.”

- a) Please explain why more vegetation management work is required in 2026 compared to 2025.**
- b) Please describe the expected scope of work for 2026 vegetation management.**
- c) Please explain how the increased cost of \$0.5 million was estimated.**

Response IR-14:

- a) In 2025 there was no vegetation management activity of the right-of-way planned in NL, while activities are planned to take place in NS. In 2026 there is vegetation management activity planned for both NL and NS. The vegetation management work scope is anticipated to fluctuate year over year depending on the amount of activity required each year.
- b) The expected 2026 scope of work for vegetation management in Nova Scotia is primarily for cutting along the grounding line, similar to 2025. Within Newfoundland, in 2026, spray and select cutting of priority areas along the right-of-way and to facilitate inspections is anticipated.
- c) The increase is to resume the vegetation management program in Newfoundland, addressing vegetation management requirements to be defined in more detail; the amount

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 is informed by work methods anticipated for NL for 2026 and costing information from
2 previous contracts.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-15:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 12

NSPML states: “As also noted in the 2025 Assessment, NSPML has adopted a condition-based approach to vegetation management for transmission lines. NSPML’s current practice is using LiDAR technology to measure the height of vegetation, and to assess and predict where vegetation must be managed in an Integrated Vegetation Management approach widely adopted in the industry, including at NS Power. Having completed the survey in 2024; the analysis is ongoing and will be completed in 2025 to assess where vegetation management is required in the near term.”

- a) Please provide the actual cost to complete the LiDAR survey in 2024.
- b) Please provide the cost to date and projected final cost to complete the LiDAR survey in 2025.
- c) How often does NSPML expect to conduct LiDAR surveys?
 - i. Please identify specifically where expected future LiDAR work is identified in Attachment 2 of the application.

Response IR-15:

- a) The LiDAR survey cost in 2024 was [REDACTED].
- b) NSPML has budgeted approximately [REDACTED] for LiDAR analysis in 2025.
- c) A LiDAR survey is planned for 2026 and again in 2028; currently a two-year interval is being planned, the requirement for this may evolve in time with experience.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

- 1 i. The planned LiDAR surveys are generally outlined in section 2 of Attachment 2 of the
2 Application. Please refer to NSEB IR-31 (a) iii for further detail.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-16:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 12

NSPML states: “As expected, more drone inspection work is now planned for 2026 as compared to the 2025 Assessment, which increases Transmission Line inspection costs by \$0.5 million.”

a) Please explain why more drone inspection work is required in 2026 compared to 2025.

b) Please explain how the increased cost of \$0.5 million was estimated.

Response IR-16:

a) There was no planned drone inspection work included in the 2025 assessment budget. For the 2026 Assessment, NSPML budgeted for drone inspection of approximately 33% of the transmission and grounding lines.

b) The increase is primarily due to the drone inspection scope of work in 2026 [REDACTED], as well as an estimate [REDACTED] to address known and unknown transmission line corrective work identified (the latter as part of these inspections). There was no allowance for transmission line corrective work included in the 2025 Assessment budget.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-17:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 12

NSPML states: “The Labour and Administration cost category is composed of costs related to regulatory and legal, consulting, and labour and incentive.”

a) Please provide a breakdown of the projected 2026 Labour and Administration cost to show legal, consulting, labour and incentive costs as separate line items.

b) Please provide a breakdown of the approved 2025 Labour and Administration cost to show legal, consulting, labour and incentive costs as separate line items.

i. Please provide the 2025 costs to date for each of these line items.

c) Please provide a breakdown of the actual 2024 Labour and Administration cost to show legal, consulting, labour and incentive costs as separate line items.

Response IR-17:

a-c) Please see table below:

Description	2026 Assessment	2025 Approved	2025 (as at July 31)	2024 Actual
Labour	4.4	4.3	2.3	3.7
Legal, regulatory, and compliance	1.9	1.6	1.3	1.4
Consultants	0.2	0.1	0.2	0.3
Office, travel, and other	3.0	2.6	1.5	2.4
Total Costs	9.5	8.6	5.3	7.8

REDACTED

Request IR-18:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 12

NSPML states: “Of the \$0.9 million increase, \$0.5 million is attributed to consulting relating to ongoing commercial matters, primarily between NSPML and NLH, and higher administrative fees associated with FLG2; with the balance of \$0.4 million primarily relating to inflationary pressures”.

- a) What is the estimated cost for “higher administrative fees associated with the FLG2”?**
- b) Please explain why the FLG2 has experienced higher administrative fees.**
- c) Please describe what new administrative duties are related to FLG2.**
- d) Are these FLG2 administrative fees one-time fees or will they be recurring in the future years?**
- e) Please explain why these administrative fees are not included in the “FLG2” cost noted in Table 1 of the application (page 10 of 29).**
- f) Are there administrative fees related to FLG1? If so, what are the annual costs?**
- g) Please describe the “ongoing commercial matters” to which some of the \$0.5 million increased cost is attributed.**
 - i. Please describe the scope of consulting work associated with these “ongoing commercial matters”, complete with an estimate of required consultant hours.**
- h) Is the consulting related to ongoing commercial matters between NSPML and NLH the same issue noted earlier in the application at p. 8, line 24, “Other Considerations”? If not, please explain what the commercial matters under Labour and Administration are related to.**
- i) The \$400,000 increase relating to “inflationary pressures” appears to be a 4.7% increase from the approved \$8.6 million Labour and Administration amount in 2025.**

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

What has NSPML assumed for inflation in 2026? Please explain the justification for this assumption in 2026.

Response IR-18:

- a) NSPML is forecasting increased administrative and credit rating agency fees of approximately 38% (\$73k) as these fees correlate to the debt issuance amounts. As the federally guaranteed debt increased by \$500M, from \$1.3B, the associated financing costs increased proportionately.
- b) The higher administration costs are a result of the higher debt balance.
- c) There are no new administrative duties, the additional costs are as noted above in b).
- d) These costs are the same annual costs related to the original FLG and will occur annually.
- e) These cost increases were not known at the time of the application as they are not new costs, they are cost increases on original FLG annual costs.
- f) Yes, please see response in a) above.
- g) The ongoing commercial matters refer to the contractual obligations as set out in the commercial agreements between NSPML and NLH. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The cost of \$0.5m was based upon expected scope remaining for 2026 at the time of assessment preparation.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

- 1 h) Confirmed, it is referring to the same matter.
- 2 i. The \$0.4m attributed to inflationary pressures relate to labour, office expenses, travel,
- 3 and administrative costs including shared services. The escalation rate used was ~3%.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-19:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 12

- a) How many FTEs are budgeted in 2026? Please provide a listing of the proposed 2026 staffing complement (FTEs) along with job titles and brief position descriptions, as well as a comparison with 2023, 2024 and 2025 FTE complements.**
- b) How many FTEs are currently in place in 2025?**
- c) Have there been any positions added or eliminated since filing for the 2025 assessment?**
 - i. If so, please describe and provide reasons.**
- d) Are there any key positions currently vacant?**
- e) What is the dollar amount budgeted for FTEs in 2025 and in 2026?**
- f) Are all employees eligible for an incentive payment?**
- g) What is the dollar amount budgeted for incentives in 2025 and in 2026?**
 - h) Are any new 2026 FTEs budgeted under O&M costs related to NSPML's application for its submarine cable protection capital application (Matter M12285)? If so, please explain.**

Response IR-19:

- a) NSPML expects the number of FTEs to remain consistent to that in 2025 at 29.5. Please refer to Table 1 below for the forecasted positions for 2026. The list of FTEs in 2024 and 2025 (proposed for the 2025 Assessment) are provided in Table 2 below, and the list for 2023 FTEs is provided in Table 3.**

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **Table 1**

Title	Proposed FTEs in 2026	Position Description
Administrative Assistant	1.00	Provide administrative support to ENL team members.
CONA Student (one at each site)	0.66	Assist in operations planning to support maintenance of Maritime Link assets, this will include but not be limited to development and execution of preventative maintenance inspections of the assets including transmission lines, High Voltage DC converter stations, switchyards and related equipment.
Contracts Supervisor	1.00	Lead the coordination and development of the contracting strategy for the various Engineering/Environmental/Construction and initiatives associated with the business.
Co-op - Procurement	0.33	Execute the procurement process over the full contract life cycle from sourcing to contract closeout. This will include conducting analysis on various elements of the procurement process, prepare communications both for management and with external vendors, engage in team meetings and presentations.
Co-op - Finance	0.66	Assist with month end and balance sheet reconciliations, data entry and general office duties.
Co-op – Information Management	0.33	Will support term project to ensure proper documentation and maintenance of legacy materials.
Corporate Accountant	1.00	Reconciling account balances, maintaining general ledger and preparing month and quarter-end reports.
Director Regulatory Affairs & Governance	1.00	Leads and manages the governance processes, reporting to the Board, support for the regulatory process. Adopted the position of Corporate Secretary for ENLH.
Engineer, Marine	1.00	Provide marine support to the Senior Manager, Engineering, focused on Marine initiatives.
Engineer, Transmission	1.00	Provide transmission line support to the Senior Manager, Engineering, focused on Marine initiatives.

2

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Title	Proposed FTEs in 2026	Position Description
General Counsel & VP Business Development	1.00	Responsible for the regulatory process along with the associated commercial and legal matters including execution of key ML Project agreement matters.
Health, Safety and Environment Specialist	1.00	Responsible for the overall development, implementation and maintenance of the safety and environmental management systems, providing leadership and ensuring compliance and alignment with Emera corporate guiding policies and procedures.
HVDC Engineer	1.00	Identifies, initiates and executes on operational and capital projects from concept development through the approval process and onto completion safely, on time and on budget.
HVDC Operations Technologist	5.00	Part of the team responsible primarily for ensuring stations are operated and maintained to achieve world class reliability and availability to best serve customers in Nova Scotia and Newfoundland and Labrador. Two of the roles are based in Nova Scotia and two of the roles are based in Newfoundland.
HVDC Operations Technologist Lead	1.00	Lead the team responsible for ensuring the stations are operated and maintained to achieve world class reliability and availability to best serve customers in Nova Scotia.
Manager, Asset Operations & Maintenance	1.00	Former role of HVDC Operations Technologist Lead evolved to Manager role as part of evolution of roles when Senior Manager, Assets moved to another Emera affiliate.
Manager Business Operations	1.00	Lead the procurement activities, and provide support to capital processes, compliance and Risk management
Operations Coordinator	1.00	Provides administrative support and procurement support.
President, ENL	1.00	Leads the overall operations of ENL including overall leadership for financial and operating performance.
Procurement Support	1.00	Supports procurement practices.
Senior Electrical Engineer	1.00	Provides planning support for the Engineering and technical teams.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Title	Proposed FTEs in 2026	Position Description
Senior. Manager, Engineering	1.00	Oversees and leads marine asset management and manages a number of compliance files. Role includes capital management and support to the Senior Director, Operations with respect to project Engineering and strategic Asset management.
Senior Corporate Accountant	1.00	Reporting and analysis of NSPML finances and creates forecasts.
Senior Manager, Assets	.25	Support for the safe and environmentally sustainable execution of NSPML's asset management plans.
Senior Manager, Regulatory & Business Transformation	1.00	Process improvement and financial regulatory support.
Senior Manager, Finance	1.00	Responsible for the financial processes, reporting and related analysis.
Senior Technical Consultant	1.00	Provides support for Asset management and various strategic files.
Senior Director, Operations	1.00	Ownership and responsibility for the safe and environmentally sustainable execution of NSPML's asset management plans. Responsible for holistic risk management spanning all elements of the Maritime Link assets.
Senior Environmental Specialist	0.25	Part-time support for environmental studies and effects-monitoring programs for the Maritime Link transmission project, undertaken by ENL.
Total complement	29.5	

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Table 2 – Budgeted positions for 2025 and Actual for 2024

Title	Proposed FTEs in 2025; Actual in 2024	Position Description
Administrative Assistant	1.00	Provide administrative support to ENL team members.
CONA Student (1 at each site for 6 weeks)	0.33	Assist in operations planning to support maintenance of Maritime Link assets, this will include but not be limited to development and execution of preventative maintenance inspections of the assets including transmission lines, High Voltage DC converter stations, switchyards and related equipment.
Contracts Supervisor	1.00	Lead the coordination and development of the contracting strategy for the various Engineering/Environmental/Construction and initiatives associated with the business.
Co-op - Procurement	1.00	Execute the procurement process over the full contract life cycle from sourcing to contract closeout. This will include conducting analysis on various elements of the procurement process, prepare communications both for management and with external vendors, engage in team meetings and presentations.
Co-op - Finance	0.33	Assist with month end and balance sheet reconciliations, data entry and general office duties.
Corporate Accountant	1.00	Reconciling account balances, maintaining general ledger and preparing month and quarter-end reports.
Director Regulatory Affairs & Governance	1.00	Leads and manages the governance processes, reporting to the Board, support for the regulatory process. Adopted the position of Corporate Secretary for ENLH.
Engineer	1.00	Participate in operational and capital projects from concept development through the approval process and onto completion safely, on time and on budget
Engineer, Marine & Contracting	1.00	Provide marine support to the Manager, Marine and Capital, as well as support procurement activities.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Title	Proposed FTEs in 2025; Actual in 2024	Position Description
General Counsel & VP Business Development	1.00	Responsible for the regulatory process along with the associated commercial and legal matters including execution of key ML Project agreement matters.
Health, Safety and Environment Specialist	1.00	Responsible for the overall development, implementation and maintenance of the safety and environmental management systems, providing leadership and ensuring compliance and alignment with Emera corporate guiding policies and procedures.
HVDC Engineer	1.00	Identifies, initiates and executes on operational and capital projects from concept development through the approval process and onto completion safely, on time and on budget.
HVDC Operations Technologist	4.00	Part of the team responsible primarily for ensuring stations are operated and maintained to achieve world class reliability and availability to best serve customers in Nova Scotia and Newfoundland and Labrador. Two of the roles are based in Nova Scotia and two of the roles are based in Newfoundland.
HVDC Operations Technologist Lead	2.00	Lead the team responsible for ensuring the stations are operated and maintained to achieve world class reliability and availability to best serve customers in Nova Scotia.
Manager Business Operations	1.00	Lead the procurement activities, and provide support to capital processes, compliance and Risk management
Manager, Marine & Capital (now Sr. Manager, Engineering)	1.00	Oversees and leads marine asset management and manages a number of compliance files. Role includes capital management and support to the Sr. Asset Manager with respect to project Engineering and strategic Asset management.
NSCC Coop	0.66	Will support term project to ensure proper documentation and maintenance of legacy materials.
Operations Coordinator	1.00	Provides administrative support and procurement support.
President, ENL	1.00	Leads the overall operations of ENL including overall leadership for financial and operating performance.
Procurement Lead	1.00	Supports procurement practices.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Title	Proposed FTEs in 2025; Actual in 2024	Position Description
Reliability/Planning Engineer (now Sr. Electrical Engineer)	1.00	Provides planning support for the Engineering and technical teams.
Senior Corporate Accountant	1.00	Reporting and analysis of NSPML finances and creates forecasts.
Senior Manager Assets (to be redeployed to meet needs of organization)	1.00	Ownership and responsibility for the safe and environmentally sustainable execution of NSPML's asset management plans.
Senior Manager, Regulatory & Business Transformation	1.00	Process improvement and financial regulatory support.
Senior Manager, Finance	1.00	Responsible for the financial processes, reporting and related analysis.
Senior Technical Consultant	1.00	Provides support for Asset management and various strategic files.
Senior Director, ESG & Comm Affairs	1.00	Responsible for holistic risk management spanning all elements of the Maritime Link assets. Focus on advancement of NSPML's risk management approach, compliance, and commercial activities.
Senior Environmental Specialist	0.25	Part-time support for environmental studies and effects-monitoring programs for the Maritime Link transmission project, undertaken by ENL.
Total complement	29.5	

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **Table 3: 2023**

Title	FTE
Administrative Assistant	2.00
Assistant HVDC Tech	1.00
CONA Student (BB)	0.60
Contracts Supervisor	1.00
Co-op General	1.00
Co-op Procurement	1.00
Corporate Accountant	1.00
Engineer-In-Training	1.00
Environmental Scientist	1.00
General Counsel & VP Business Development	1.00
Health, Safety and Environment Manager	1.00
HVDC Engineer	1.00

3

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Title	FTE
HVDC Operations Technologist	3.00
HVDC Ops Technologist Lead	2.00
Intermediate Accountant	1.00
Manager, Commercial Affairs	1.00
President, ENL	1.00
Procurement & Contract Specialist	1.00
Project Director	1.00
Reliability/Planning Engineer	1.00
Safety Support Associate	1.00
Senior Manager Assets	1.00
Senior Manager, Accounting	1.00
Senior Project Manager	1.00
Senior Technical Consultant	1.00
Senior Director, ESG & Commercial Affairs	1.00
Total complement	29.6

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 b) 23.16 positions are currently in place; see part d for vacancies.

2
3 c) No positions have been added or eliminated since filing for the 2025 Assessment. The
4 changes to the FTE complement proposed when the 2025 Assessment was filed includes:

- 5 - The Manager, Marine & Capital was promoted to Senior Manager, Engineering and
6 the HVDC Operations Technologist Lead was promoted to Manager, Asset Operations.
7 The role of Senior Director, ESG and Commercial Operations evolved to Senior
8 Director, Operations. These three roles absorbed the role of Senior Manager, Asset
9 Manager.

10
11 d) The roles of the Engineer, HVDC Engineer, Engineer Marine & Contracting, Engineer-in-
12 Training, Senior Technical Consultant and Procurement Support are currently vacant.

13
14 Four of these roles are currently being recruited for. Although head-count remains
15 consistent for these roles, they have been redeployed as roles for Senior Electrical
16 Engineer, Marine Assets Engineer, Electrical/HVDC Engineer, and Transmission Assets
17 Engineer. Responsibilities for these roles are presently being managed via contract or
18 intercompany support on a temporary basis.

19
20 e) The amount budgeted for FTEs in 2025 is \$4.3M and \$4.4M for 2026.

21
22 f) Yes, all regular full-time permanent employees are eligible for an incentive payment.

23
24 g) The dollar amount budgeted for an incentive payment is \$ 196,000 in 2025 and \$202,000
25 in 2026.

26
27 h) There are no net new positions budgeted under O&M costs related to NSPML's application
28 for its submarine cable protection capital application (M12285).

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-20:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

In Matter M11791 relating to the 2025 cost assessment application, Board Staff IR-7(b) asked the following:

“In its Reply Submissions dated December 5, 2023, in the proceeding for NSPML’s 2024 assessment (M11285), NSPML noted that it had, at that time, 74 insulated gate bipolar transistor (IGBT) spares and said its target inventory was 224. Please provide a table accounting for the monthly changes in inventory levels of IGBT spares since that time and NSPML’s annual failure rate for IGBTs since the Maritime Link became operational”. In its response on August 19, 2024, NSPML noted it expected to have 116 IGBT’s in inventory at the end of 2024. In footnote 12 on page 14 in Exhibit N-1 in this proceeding, NSPML notes it will be receiving IGBTs in 2026.

- a) Please update the table provided in NSPML’s response to 2025 YTD actual, including updating the failure rate information. Please include end of year projections for 2025 and 2026.**
- b) Please include an additional column showing annual capital expenditures on IGBTs in each year.**
- c) Please explain any discrepancy between the actual number of IGBTs in inventory at the end of 2024 and NSPML’s August 19, 2024, estimate of 116.**

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Response IR-20:

a-c) Please see the table below.

Year	# IGBTs Failed	IGBT Annual Failure Rate	IGBT Spares Rec'd	IGBT Inventory Year End	Sustaining Capital IGBT in Assessment \$M	Sustaining Capital IGBT - Expenditure \$M
2018	6	0.11%		74		
2019	8	0.15%		74		
2020	8	0.15%		74		
2021	3	0.06%		74		
2022	8	0.15%		74		
2023	6	0.11%		74		
2024	5	0.09%		69	0.6	Not received until 2026
2025 YTD	1	0.02%	19	87	0.5	Not received until 2026
2026 Projection	7	0.13%	50	130		*1.0

*Note that this expenditure represents the receipt of orders detailed in the 2024 and 2025 Assessment under sustaining capital. Subsequent to the 2025 Assessment filing on July 4, 2024, NSPML learned that Hitachi had changed the minimum order for IGBT units to 50, and that the lead time from order to receipt was 68 weeks. As such, an order was placed for 50 units in December 2024, and these are expected to be received in 2026. While NSPML requested this sustaining capital in the 2024 and 2025 Assessments based on an estimated cost¹, the inclusion was for approval of the capital spend and collection of the spend, which was limited to the annual depreciation.

Until January 2024, the IGBTs were provided by the OEM under warranty and a spares level of 74 IGBTs was maintained from year to year.

As of August 2024, NSPML expected to receive 19 IGBTs from Hitachi related to the Bipole Forced Outage Guarantee Settlement from the warranty period and to place an order

¹ As approved by the NSEB in M11285, Decision, paragraph 44 and M11791, Decision, paragraph 63.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 for 25 IGBTs to be received by year end, which would have rendered the year end inventory
2 at around 116 units, depending on the failure rate within the year (74+19+25-failure rate).
3 The 19 IGBTs were subsequently received in 2025. With respect to the order for 25 units
4 in 2024, upon engagement with Hitachi, the delivery period was longer than anticipated
5 (68 weeks) and the minimum order quantities for manufacturing purposes was 50 units.
6
7 Given actual and assumed failures for 2025 and 2026 and the order placed in 2024, the
8 quantity of IGBTs on hand at year end 2026 is estimated to be 130 units.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-21:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 14

NSPML stated that sustaining capital expenditures of about \$0.5 million (excluding the proposed submarine cable protection capital application) are expected to be required and incremental funding for those expenditures is being requested in the 2026 assessment application. Please provide the current estimate of amounts that may be requested for future (sustaining) capital investments in 2027, 2028 and 2029, including for any projects less than \$1 million.

Response IR-21:

Please see below the supporting details for the information provided in graphical format in Confidential Attachment 2 of the Application, for 2026-2029.

	Calendar Year (Operations Year)			
Initiative	2026 (8)	2027 (9)	2028 (10)	2029 (11)
Routine General	0.5	0.5	0.5	0.5
Routine IGBTs	1.1 ¹			
Marine	32.9	-	-	-
HVDC SCM				
Total	35	21	2	1

The current estimates for general routine capital in each year are the same as for 2026 at \$0.5M. In addition, NSPML expects to make orders for IGBT spares in alignment with the asset management strategy. Please refer to NSEB IR-20 for additional context.

¹ Previously ordered in 2024.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

- 1 A sub-list of projects and associated costs for the requested years is not yet available; the initiatives
- 2 will be determined from year to year.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-22:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 17

NSPML states: “Applying the requested (see Section 7) 40 percent equity thickness to NSPML’s forecasted 2026 sustaining capital average rate base of \$15.5 million yields an average sustaining capital equity investment of \$6.2million.” Further, footnote 17 on page 17 references Attachment 1 of the application for NSPML’s Rate Base Continuity Schedule.

- a) Please show NSPML’s calculations for the 2026 average sustaining capital rate base of \$15.5 million.
- b) The rate base continuity schedule in Attachment 1 shows net sustaining capital additions in 2026 of \$34.5 million. Please reconcile this amount with the \$33.5 million amount shown in Table 3 on page 14 of 29 of the application.
- c) Please confirm, or clarify otherwise, that if NSPML applies the 30% equity thickness to the 2026 forecasted sustaining capital average rate base of \$15.5 million, the average sustaining capital equity investment will be \$4.65 million ($0.3 \times 15.5 = 4.65$).
- d) If applying the 30% equity thickness, please provide the estimated equity financing costs in 2026.

Response IR-22:

- a) Please see table below with calculation for estimated sustaining capital rate base:

Description	Q4 2025	Q1 2026	Q2 2026	Q3 2026	Q4 2026
Sustaining Capital Expenditures	1.5	2.8	2.9	35.9	36.0
Accumulated Depreciation	(0.1)	(0.1)	(0.1)	(0.4)	(0.7)
Ending Balance	1.4	2.7	2.8	35.5	35.3

5 Quarter Average 15.5

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 b) A capital expenditure for IGBT's was previously approved in 2024 and 2025 for
2 approximately \$1.0m combined, however there is a lengthy lead time on receiving the
3 product and therefore the physical delivery is not expected until early 2026.

4
5 c) Confirmed.

6
7 d) The total estimated equity financing cost when applying a 30% equity thickness to
8 sustaining capital would be \$40.6m as compared to \$40.7m in the 2026 Application, which
9 applied 40% equity thickness to sustaining capital. The portion relating to sustaining capital
10 specifically at 30% and 40% is approximately \$0.4m and \$0.5m respectively. Please see
11 SBA IR-006(a)(iv).

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-23:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 21

NSPML states: “NSPML also believes that requesting a 9 percent Return on Equity (ROE) with the evidence provided could support a more simplified review of ROE specifically and, as a whole, NSPML’s 2026 Assessment Application.” Please explain what is meant by “a more simplified review”. Is it intended to suggest that its evidence provided must be accepted as unquestionable and inevitably leading to only a single conclusion that the requested 9% rate cannot possibly be higher than NSPML is entitled to?

Response IR-23:

NSPML believed that requesting continuation of its existing ROE, as opposed to requesting an increase to 10.1% to 10.35% as recommended by its expert, would support a less contentious ROE review and, as such, support a more simplified review.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-24:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 22

NSPML states: “However, because there are limited regulated subsea utility comparators in North America, Concentric believed it prudent to provide additional analysis based on a proxy group of typical North American Electric T&D utilities...” With specific reference to risk profiles, please explain why it is more appropriate to use a proxy group of US and Canadian T&D utilities than it is to provide an analysis of regulated subsea utilities based in Europe.

Response IR-24:

Concentric considered whether there were other regulated subsea transmission projects that could be included as comparators in our analysis. However, Concentric ultimately concluded that the companies discussed in Section 4 of our report were the best comparators for NSPML. With regard to European utilities with regulated subsea cables in particular, Concentric found that the regulatory environment in Nova Scotia is more like that in other Canadian and U.S. jurisdictions than the regulatory regime in many European countries. For example, returns authorized by OFGEM in the United Kingdom are based on a system of caps and floors that is very different than the rate of return regulation used in most North American jurisdictions. Consequently, it is challenging to compare the returns for OFGEM regulated subsea cable projects to those in Canada and the U.S. In addition, data is difficult to obtain for European subsea cable projects, which limited Concentric’s ability to include that information in our analysis for NSPML. For these reasons, Concentric decided to supplement the return data provided in Section 4 of our report with an analysis of the cost of equity for a proxy group of North American electric T&D utilities with

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

- 1 similar business and financial risk characteristics as NSPML, as described in Section 6 of our
- 2 report. Concentric used this evidence both to inform our recommended ROE for NSPML.

NON-CONFIDENTIAL

Request IR-25:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 22

NSPML states: “The converter technology housed inside the converter stations at both ends of the interconnection in Nova Scotia and Newfoundland includes thousands of components, including multiple layers of sensitive and specialized digital equipment, computers and associated technology that all have their own risks, obsolescence and spares requirements. These highly technical, specialized, and complicated systems differ in scale and complexity from traditional transmission substations and add significantly to the operational risk and associated maintenance focus and approach taken (and required) by the Maritime Link asset integrity management team.”

a) Please describe each of these risks.

- i. For each risk, please explain why it is unique and/or a higher risk compared to an HVAC transmission asset base (including related substations, etc.)**

b) Please describe the spares requirements for this equipment.

- i. For each spare requirement, please explain why it is different compared to an HVAC transmission asset base (including related substations, etc.)**

c) Please confirm that the “significant operational risk” (as asserted by NSPML) for the converter stations is mitigated by increased NSPML O&M cost projections as compared to traditional HVAC assets and substations.

- i. If not confirmed, please explain.**

d) Please confirm that the obsolescence risks and spare requirements for the converter station’s equipment is accounted for in NSPML’s sustaining capital cost projections.

- i. If not confirmed, please explain.**

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 Response IR-25:

2
3 a) & b)

4
5 Most of the assets within the Maritime Link are part of a single significant transmission
6 corridor primarily for the transfer of the Nova Scotia Block and market energy. The
7 relative criticality of the Maritime Link as it relates to system operations and meeting
8 customer needs, including derisking fossil fuel usage in Nova Scotia, are substantial.
9 This is generally not the case with single pieces of equipment in AC yards and
10 transmission where parallel transmission paths and redundant equipment allow for system
11 operations to work around. Further, the ancillary system stability services of frequency
12 control and voltage control that are available to the interconnected utilities as a result of
13 the Maritime Link interconnection enables improved resiliency of the provincial
14 transmission system and improved operational flexibility all of which will continue to be
15 critical as the system becomes ever more complicated into the future. These attributes
16 along with complexities and operational constraints associated with the operations and
17 maintenance of specialized systems in both remote and marine environments all increase
18 the operational risk actively managed by the NSPML team for the benefit of Nova Scotia
19 customers and the interconnected utilities.

20
21 With respect to the converter stations specifically:

- 22
- 23 • A converter station is significantly more complicated than a HVAC substation; it's
24 worth noting that an HVAC substation exists within a converter station. One aspect of
25 its complexity is the multiple systems that must be controlled to work in tandem to
26 affect the conversion (valve cooling, climate control, valve firing (active and reactive
27 power), AC and DC filtering, dynamic performance, integration with grid controls,
28 frequency response, black start, damping control, etc).

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

- 1 • Each HVDC is designed uniquely to integrate seamlessly (and provide grid solutions)
2 for the grids being interconnected. Each piece of equipment is specifically designed for
3 the facility and in fact equipment ratings differ between the two ends of ML to
4 accommodate integration with the power system. One of each major component of
5 different ratings was procured during the project.
- 6 • There are only 3 major HVDC Original Equipment Manufacturers (OEMs); they are
7 Hitachi Energy (was ABB), Siemens, and GE with vendors from China trying to enter
8 the market. A significant proportion of equipment (physical, control and other) is only
9 provided by the OEM and is their proprietary technology. The population of HVDC
10 assets across the world is also quite small, therefore there is limited 3rd party activity
11 re-engineering and producing components.
- 12 • Additionally, Maritime Link's technology is an ABB Gen 4 VSC HVDC facility and
13 is only one of a few implemented globally. It is the only VSC HVDC true bipole in
14 the world. This makes access to spare components / replacement components
15 constrained and highly dependent on the vendor. NSPML has to maintain spares and
16 expertise that are specific to its HVDC technology.
- 17
- 18 c) The operational risk isn't entirely mitigated by increased O&M expense and is driven by
19 market dynamics for the above reasons and the significant higher complexity.
- 20
- 21 d) Yes, obsolescence risks and spare part requirements have been or will be accounted for in
22 capital costs where possible.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-26:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 23

NSPML states: “Another complexity that separates NSPML from more traditional transmission owner/operators is the responsibility for managing complex commercial agreements with Newfoundland and Labrador Hydro (“NLH”), including the Joint Operations Agreement, the Energy Access Agreement, and the Energy and Capacity Agreement. As noted by Concentric, managing such contracts is atypical of a North American transmission entity.”

a) Please file the current versions of the Joint Operations Agreement, the Energy Access Agreement, and the Energy and Capacity Agreement.

b) It seems more likely that responsibility for managing these commercial agreements falls more heavily on NS Power and the NS Power System Operator.

i. Please precisely define NSPML’s actual responsibility and role in managing these agreements as distinct from the management and actual activities undertaken by NS Power and the NS Power System Operator, including any material differences in the issues involved, the time commitment, costs and consulting assistance.

ii. Please explain why any residual responsibility left to NSPML is complex, relative to traditional transmission owner/operators, including any material differences in the issues involved, the time commitment, costs and consulting assistance.

c) Assuming NSPML prudently manages these agreements, please confirm the higher risk associated with these agreements would generally be borne by ratepayers.

i. If not confirmed, please explain.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **d) Please confirm that costs associated with managing these complex commercial**
2 **agreements (as asserted by NSPML) are accounted for in NSPML’s O&M cost**
3 **projections.**

4 **i. If not confirmed, please explain.**

5 **e) Please describe the additional risks to NSPML associated with managing these**
6 **agreements, as compared a typical transmission entity.**

7 **f) Page 4 states: “As background, strong performance of the Maritime Link continues**
8 **from 2024 into 2025.” Page 8 of Appendix A states: “The Maritime Link was built on**
9 **time and on budget by NSPML...” Would the “strong performance” and ability to**
10 **complete a mega project as planned not be a strong risk mitigating factor? If not,**
11 **please explain.**

12 **g) Please confirm that complexity and risk is mitigated for NSPML given the existence**
13 **of “OEM recommendations, industry standards and guidelines” as noted on page 4**
14 **of NSPML’s Asset Management Outlook.**

15
16 Response IR-26:

17
18 a) Please see Attachments 1-3.

19
20 b)

21 i. The Formal Agreements, which include the Joint Operations Agreement (JOA), the
22 Energy and Capacity Agreement (ECA), and the Energy Access Agreement (EAA),
23 are a series of complex interrelated agreements that, combined, set out the rights and
24 obligations of the contracting parties in relation to the Lower Churchill Project. While
25 NS Power and the NS Power System Operator manage the purchase, scheduling, and
26 delivery of energy flowing over the Maritime Link, NSPML manages all other aspects
27 of the relationship with Newfoundland & Labrador Hydro (NLH), balancing its
28 contractual commitments with its regulatory obligations. In addition, given the physical

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 proximity of the Maritime Link to the NLH system and NSPML's level of knowledge
2 of the respective components of the overall Muskrat Falls Project, NSPML is best
3 positioned to conduct active and ongoing monitoring of system anomalies (e.g., outages
4 and derates) and ML energy flow levels, which are typically followed by intervention
5 and related communications to confirm and/or encourage optimization based on
6 NSPML's real time system conditions in both Newfoundland & Labrador and Nova
7 Scotia.

8
9 Examples of NSPML's scope of responsibility include, but are not limited to:

- 10 • Participation as a member of the Joint Operations Committee (JOC) established
11 under Article 3 of the JOA (refer to NSEB IR-06);
 - 12 • Recurring reporting obligations to the JOC respecting annual maintenance
13 obligations, planned and unplanned outages, and other operational matters;
 - 14 • Managing the condition of the Maritime Link assets to meet the contractual
15 obligations for handover in August 2056;
 - 16 • Negotiation and resolution of the commercial Long-Term Asset Management Plan
17 true-up mandated by Article 5 of the JOA, and subsequent compliance with the
18 Plans;
 - 19 • Negotiation and resolution of the Supplemental Energy true-up mandated by
20 Schedule 4 to the ECA; and
 - 21 • Ensuring compliance by NLH with the obligations respecting compliance with the
22 Nalcor Basis of Design and overall asset reliability, delivery of the NS Block
23 (including Supplemental Energy), availability of market-priced energy under the
24 EAA, and imposition of contractual remedies for noncompliance. These
25 responsibilities are of particular importance, as the holdback mechanism.
- 26

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 ii. Typical transmission operators do not have a complex suite of interrelated agreements
2 and assets to manage with the associated compliance and engagement obligations, or
3 such a high degree of reliance upon another utility for its operations.

4
5 c)

6 i. NSPML cannot confirm at this time. The clearest example is the holdback mechanism
7 which was implemented at a time when customers were paying for the Maritime Link
8 but not receiving the full energy delivery benefits. The holdback mechanism has
9 resulted in material disallowances due to NLH's poor delivery performance
10 immediately after execution of the Acceleration Agreement that started NS Block
11 obligations in August of 2021. NSPML is not questioning the merit of the holdback
12 mechanism which was instituted at a time when customers were paying for both
13 replacement energy and NSPML's assessment costs. However, to respond to the
14 specific question from the Board as to whether prudent management of the contracts
15 would necessarily result in ratepayers bearing the increased risks of managing those
16 contracts, this demonstrates that NSPML has born some of these risks.

17
18 In addition, management of these types of contracts is not a risk that we are aware of
19 that other transmission entities in the comparator group bear. Prudence should protect
20 the Company from disallowances but given the added complexity there is also more
21 room for questioning performance as compared to entities that do not have the same
22 responsibilities.

23
24 d) Confirmed.

25
26 e) Please refer to c).
27

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

- 1 f) As explained above, the complexity and risk associated with the Formal Agreements
2 managed by NSPML is in many ways different from the complexity and risk associated
3 with designing, constructing and operating an asset within a set capital budget and
4 schedule. While NSMPL does agree that its strong performance in both delivering the
5 Maritime Link Project on time and on budget and the asset's performance since going into
6 commercial operation are evidence of NSPML's prudent management of its obligations,
7 this success does not directly mitigate the risks that remain under the commercial
8 agreements nor does it mean that the assets being managed by NSPML are not more
9 complex and, as such, carry more operational risk than traditional T&D assets of the
10 comparator group (please see NSEB- IR-025).
- 11
- 12 g) Not confirmed. The reference to OEM recommendations and industry standards and
13 guidelines was in relation to how NSPML prepared its sustaining capital outlook over a
14 10-year horizon. They do not bear any relation to the risks arising from NSPML's
15 management of its complex commercial agreements with NLH nor the management of
16 more complex assets.

NALCOR ENERGY

and

EMERA INC.

**AMENDED AND RESTATED
JOINT OPERATIONS AGREEMENT**

July 31, 2014

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	1
1.1 Definitions	1
1.2 Construction of Agreement.....	19
1.3 Conflicts between Parts of Agreement	21
1.4 Applicable Law and Submission to Jurisdiction.....	21
1.5 Schedules.....	22
1.6 Inter-Relationship with Original JOA.....	22
ARTICLE 2 TRANSMISSION ASSET MANAGERS AND SYSTEM OPERATORS	22
2.1 Transmission Asset Managers	22
2.2 Relationship with System Operators.....	23
ARTICLE 3 JOINT OPERATIONS COMMITTEE.....	23
3.1 Establishment and Duration of JOC	23
3.2 JOC Composition, Quorum, Duration and Procedures	23
3.3 Manager Submissions and Responsibilities of the JOC.....	24
3.4 JOC Decision Making	26
3.5 Meetings of JOC	27
3.6 Resolution in Writing.....	29
3.7 Decisions of JOC Binding	30
3.8 Costs of JOC Participation	30
ARTICLE 4 PERFORMANCE OF O&M ACTIVITIES	30
4.1 Managers' Responsibilities.....	30
4.2 Annual Maintenance Plan	31
4.3 Operations & Maintenance Manual	31
4.4 Operation and Maintenance Contractors	32
4.5 Regulatory Approvals	32
4.6 Safety.....	32
4.7 Shared Use of Transmission Corridor.....	32
4.8 Maritime Link Life Extension Projects	33
ARTICLE 5 FINANCIAL AND OTHER ARRANGEMENTS.....	33
5.1 Initial LTAMP and LTAMP Cost Estimates	33
5.2 In-Service LTAMPs and LTAMP Cost Estimates	34
5.3 No Role of JDC-ML.....	34
5.4 Financial Principles	34
5.5 Adjustments Regarding Operating and Maintenance Costs	35
5.6 CEO Override Costs	37
5.7 Taxes.....	38
5.8 Invoicing and Payment	44
5.9 Not Create Encumbrances	46

ARTICLE 6 INFORMATION, ACCESS AND REPORTING	46
6.1 Records and Audits.....	46
6.2 Access and Information.....	47
6.3 Restriction	47
6.4 Reporting Obligations	47
ARTICLE 7 REQUIRED CONDITION AND TRANSFER OF MARITIME LINK AT END OF TERM	48
7.1 Emera Obligation to Transfer at End of Term	48
7.2 Emera Liability after Transfer Date	50
7.3 Performance of Work.....	50
7.4 Transition to Nalcor of O&M Activities	51
7.5 Transfer on Early Termination	53
ARTICLE 8 FORCE MAJEURE	53
8.1 Force Majeure	53
ARTICLE 9 INSURANCE	54
9.1 Insurance Program	54
9.2 Coverages, Limits, Deductibles and Exclusions	54
9.3 Liability and Property Coverage	55
9.4 Other Requirements.....	55
9.5 Lender Requirements.....	55
9.6 Evidence of Insurance	55
9.7 Placement of Required Insurance	55
9.8 Effect of Failure to Insure	56
9.9 Site Visits	56
9.10 Corporate Policies	56
ARTICLE 10 TERM AND TERMINATION.....	56
10.1 Term	56
10.2 Termination.....	56
10.3 Effect of Termination	57
ARTICLE 11 DEFAULT AND REMEDIES	57
11.1 Emera Events of Default.....	57
11.2 Nalcor Remedies upon Emera Event of Default.....	58
11.3 Nalcor Events of Default	59
11.4 Emera Remedies upon Nalcor Event of Default.....	59
11.5 Equitable Relief	60
ARTICLE 12 LIABILITY AND INDEMNITY	60
12.1 Nalcor Indemnity.....	60
12.2 Emera Indemnity.....	60
12.3 Own Property Damage	61

12.4	Indemnification Procedure	61
12.5	Insurer Approval.....	63
ARTICLE 13 LIMITATION OF DAMAGES		63
13.1	Limitations and Indemnities Effective Regardless of Cause of Damages	63
13.2	No Consequential Loss	63
13.3	Insurance Proceeds	64
13.4	No Breakage or Other Similar Financing Costs Permitted	64
ARTICLE 14 REPRESENTATIONS AND WARRANTIES		64
14.1	Nalcor Representations and Warranties.....	64
14.2	Emera Representations and Warranties	65
ARTICLE 15 CONFIDENTIALITY AND INTELLECTUAL PROPERTY.....		66
15.1	Incorporation of Project NDA.....	66
15.2	Disclosure of Agreement.....	66
15.3	Intellectual Property	66
15.4	Intellectual Property Rights Licensed for the O&M Activities	69
15.5	Further Representations, Warranties and Covenants Regarding IP	69
ARTICLE 16 ASSIGNMENT AND CHANGE OF CONTROL		71
16.1	Nalcor Assignment Rights	71
16.2	Emera Assignment Rights.....	72
16.3	No Sale of Maritime Link.....	72
16.4	Nalcor Option	73
ARTICLE 17 DISPUTE RESOLUTION		73
17.1	General	73
17.2	Procedure for Inter-Party Claims	73
ARTICLE 18 MISCELLANEOUS PROVISIONS.....		74
18.1	Notices.....	74
18.2	Prior Agreements	75
18.3	Counterparts	75
18.4	Expenses of Parties	76
18.5	Announcements	76
18.6	Relationship of the Parties	76
18.7	Further Assurances.....	76
18.8	Severability	76
18.9	Time of the Essence	76
18.10	Amendments.....	77
18.11	No Waiver.....	77
18.12	No Third Party Beneficiaries.....	77
18.13	Survival	77

18.14	Waiver of Sovereign Immunity.....	77
18.15	Successors and Assigns	77
18.16	Capacity of Nalcor	78

Schedules:

Schedule 1	-	Dispute Resolution Procedure
Schedule 2	-	Formal Agreements
Schedule 3	-	Form of Assignment Agreement

**AMENDED AND RESTATED
JOINT OPERATIONS AGREEMENT**

THIS AMENDED AND RESTATED JOINT OPERATIONS AGREEMENT is made effective the 31st day of July, 2014 (the “**A&R Effective Date**”)

B E T W E E N :

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being Chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown (“**Nalcor**”)

- and -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia (“**Emera**”)

WHEREAS:

- A. Nalcor and Emera entered into a term sheet dated November 18, 2010 (the “**Term Sheet**”) confirming their common understanding of the purpose, process and timing for the supply and delivery of power and energy from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England;
- B. on July 31, 2012 Nalcor and Emera entered into the original version of this Agreement (the “**Original JOA**”);
- C. contemporaneously with the execution and delivery of this Agreement, Nalcor and Emera are entering into an amended and restated Maritime Link Joint Development Agreement (the “**A&R ML-JDA**”); and
- D. Nalcor and Emera wish to amend and restate the Original JOA to update certain provisions and make other amendments for consistency with the A&R ML-JDA;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 **Definitions**

In this Agreement, including the recitals and, subject to **Section 1.2(h)**, in the Schedules:

“**A&R Effective Date**” has the meaning set forth in the commencement of this Agreement;

“A&R ML-JDA” has the meaning set forth in the preamble to this Agreement;

“Affiliate” means, with respect to any Person, any other Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such Person; provided however that (a) the NL Crown shall be deemed not to be an Affiliate of Nalcor, and (b) if an Affiliate of a Party is an O&M Contractor, that Affiliate, except for the purposes of **Sections 15.3, 15.4 and 15.5**, shall be deemed not to be an Affiliate of such Party and, for greater certainty, not to be within the Nalcor Group or the Emera Group, as applicable, when acting in its capacity as an O&M Contractor;

“Agreement” means this agreement, including all Schedules, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“Annual Maintenance Plan” has the meaning set forth in **Section 4.2(a)**;

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of, and the terms of all judgments, orders and decrees issued by, any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Applicable Regulator” means:

- (a) in respect of the Labrador Transmission Assets and the Labrador-Island Link, the PUB; and
- (b) in respect of the Maritime Link, the UARB;

“Approved by the JOC” means approved by a decision of the JOC made in accordance with **Article 3**, and **“Approves”**, **“Approved”** and **“Approval”** in relation to the JOC have corresponding meanings;

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Background IP” means the Nalcor Background IP or the Emera Background IP, or both the Nalcor Background IP and the Emera Background IP, as the context requires;

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL, or in Halifax Regional Municipality, NS;

“CEO Override Costs” means any increased operating and maintenance costs for which Nalcor is liable pursuant to Section 3.2(e)(ii) of the ML-JDA;

“Canadian GAAP” means generally accepted accounting principles as defined by the Canadian Institute of Chartered Accountants or its successors, as amended or replaced by international financial reporting standards or as otherwise amended from time to time;

“Capacity” means the capability to provide electrical power, measured and expressed in MW;

“Claiming Party” has the meaning set forth in **Section 17.2(a)**;

“Claims” means any and all Losses, claims, actions, causes of action, demands, fees (including all legal and other professional fees and disbursements, court costs and experts’ fees), levies, Taxes, judgments, fines, charges, deficiencies, interest, penalties and amounts paid in settlement, whether arising in equity, at common law, by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind or character;

“Commercial Operation Date” has the meaning set forth in the ML-JDA;

“Commercialization” has the meaning set forth in **Section 15.5(c)**;

“Commercializing Party” has the meaning set forth in **Section 15.5(c)**;

“Commissioning” means the start-up and testing activities required to demonstrate that a Transmission Asset is ready for commercial operation;

“Confidential Information” has the meaning given to such term in the Project NDA;

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have correlative meanings);

“Defined Asset Life Extension Costs” means, with respect to a Defined Asset, operating and maintenance costs that are incremental to the Operating and Maintenance Costs required in accordance with Good Utility Practice to provide a Service Life of the Defined Asset no greater than its Initial Service Life; provided however that, for greater certainty, where the

service life of a replacement for a major component of a Defined Asset extends beyond the Initial Service Life of the Defined Asset:

- (a) if the replacement component is the lowest life cycle cost option to maintain the Service Life of the Defined Asset to at least its Initial Service Life, the life cycle cost of the replacement is not a Defined Asset Life Extension Cost; or
- (b) if the replacement component is not the lowest life cycle cost option to maintain the Service Life of the Defined Asset to at least its Initial Service Life, the incremental life cycle cost of the replacement component above the corresponding cost of the lowest life cycle cost option is a Defined Asset Life Extension Cost.

“Defined Assets” means the Muskrat Falls Plant, the Labrador-Island Link, the Labrador Transmission Assets and the Maritime Link;

“Dispute” means any dispute, controversy or claim of any kind whatsoever arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Applicable Law that affects this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof;

“Dispute Resolution Procedure” has the meaning set forth in **Section 17.1(a)**;

“Effective Date” means July 31, 2012;

“Emera” has the meaning set forth in the preamble to this Agreement and includes Emera’s successors and permitted assigns;

“Emera Affiliate Assignee” means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 16.2(a)**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

“Emera Background IP” means the Intellectual Property Rights owned by Emera or its Affiliates which are Used in the Transmission Assets but which are not Emera Foreground IP;

“Emera Default” has the meaning set forth in **Section 11.1**;

“Emera Foreground IP” means the Intellectual Property Rights conceived, developed or reduced to practice by Emera, its Affiliates, or employees of Emera or its Affiliates, whether or not Used in the Transmission Assets, the costs of which are Operating and Maintenance Costs (other than costs attributable to the Muskrat Falls Plant), which conception, development or reduction to practice arose out of performance of Emera’s O&M Activities, or assigned to Emera or its Affiliates by an O&M Contractor pursuant to an O&M Contract;

“Emera Group” has the meaning set forth in **Section 12.1**;

“Emera IP” means the Emera Background IP and the Emera Foreground IP;

“Emera Rights” has the meaning set forth in **Section 16.2(a)**;

“Encumbrance” means any mortgage, lien, pledge, judgment, execution, charge, security interest, restriction, claim or encumbrance of any nature whatsoever;

“Energy” means electrical energy measured and expressed in MWh;

“Energy and Capacity Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“Expiry Date” means the date of expiration of the Term;

“Facility Real Property Interests” means:

- (a) any estate or right in, over, under or appurtenant to, real property recognized under Applicable Law, including the seabed, including ownership in fee simple, leasehold interests, easements, rights of way and other rights in the nature of an interest in or appurtenant to real property; and
- (b) any licences in respect of real property,

necessary for the purposes of the construction and installation of the Maritime Link as contemplated by the ML-JDA and for its use, operation, maintenance, repair and rehabilitation during, and decommissioning and removal at the end of, its Service Life;

“Financial Matter” means any JOC Matter that impacts the Operating and Maintenance Costs;

“First Commercial Power” has the meaning set forth in the Energy and Capacity Agreement;

“First Party” has the meaning set forth in **Section 5.7(o)** or **5.7(p)**, as applicable;

“Force Majeure” means an event, condition or circumstance (each an **“event”**) beyond the reasonable control of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, ice conditions, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;

- (d) an accident causing material physical damage to, or materially impairing the operation of, or access to, the Defined Assets;
- (e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the O&M Activities, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization; and
- (f) any event or circumstance affecting an O&M Contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that the O&M Contractor is relieved from the performance of its obligations under the applicable O&M Contract,

provided that:

- (i) the effect of such event of Force Majeure must continue for a period of not less than one day;
- (ii) lack of finances or changes in economic circumstances of a Party shall not be considered an event of Force Majeure; and
- (iii) any delay in the settlement of any Dispute shall not be considered an event of Force Majeure;

“Foreground IP” means the Nalcor Foreground IP or the Emera Foreground IP, or both the Nalcor Foreground IP and the Emera Foreground IP, as the context requires;

“Formal Agreements” means the agreements listed in **Schedule 2**;

“Foreign Jurisdiction” has the meaning set forth in **Section 5.7(p)**;

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices,

methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

“Granting Party” has the meaning set forth in **Section 15.3(f)**;

“HSE” means health, safety and the environment;

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“IP Commercialization End Date” means, in respect of each Intellectual Property Right which has achieved Commercialization hereunder, the date which is the earlier of (i) 20 years after the date of Nalcor’s acquisition of ownership of the Maritime Link pursuant to this Agreement or any other Formal Agreement, or (ii) expiry of such Intellectual Property Right;

“IP Commercialization Share” with reference to Nalcor means 50% prior to the IP Commercialization End Date and zero percent after the IP Commercialization End Date, and with reference to Emera means 50% prior to the IP Commercialization End Date and zero percent after the IP Commercialization End Date;

“Income Tax Act” means the *Income Tax Act* (Canada);

“Indemnified Party” has the meaning set forth in **Section 12.4(a)**;

“Indemnitor” has the meaning set forth in **Section 12.4(a)**;

“Initial LTAMP” has the meaning set forth in **Section 5.1**;

“Initial LTAMP Cost Estimate” means the estimated cost by year of the O&M Activities contemplated by the Initial LTAMP of each Defined Asset;

“Initial Service Life” means:

- (a) in respect of the Maritime Link, the Service Life of the Maritime Link as at the A&R Effective Date and as confirmed or adjusted at First Commercial Power, as determined by the joint development committee under the ML-JDA;
- (b) in respect of the LIL, the Service Life of the LIL as at Sanction of the LIL as determined by Nalcor, which shall be confirmed or adjusted to equal the Service Life as at First Commercial Power (as defined in the NLDA in respect of the LIL), as determined by the PUB or other Authorized Authority as provided in the NLDA; and

- (c) in respect of the MFP and the LTA, the Service Life of each such Defined Asset as at Sanction of each such Defined Asset as determined by Nalcor, and as confirmed or adjusted by Nalcor at First Commercial Power (as defined in respect of each such Defined Asset in the NLDA);

“In-Service Date” means, with respect to each Transmission Asset, the date on which the appropriate System Operator accepts the asset as ready to go into operation and begin transmitting Energy and Capacity;

“In-Service LTAMP” means an update of the Initial LTAMP based on the Muskrat Falls Plant and the NL Transmission Assets as constructed, in the case of Nalcor, and based on the Maritime Link as constructed, in the case of Emera;

“In-Service LTAMP Cost Estimate” means the estimated cost by year of the O&M Activities contemplated by the In-Service LTAMP of each Defined Asset at the time of the Commercial Operation Date of the Maritime Link;

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;
- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other

similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside, or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Intellectual Property Rights” means:

- (a) any and all proprietary rights anywhere in the world provided under (i) patent law, (ii) copyright law (including moral rights), (iii) trade-mark law, (iv) design patent or industrial design law, (v) semi-conductor chip or mask work or integrated circuit topography law, or (vi) any other statutory provision or common law principle applicable to this Agreement, including trade secret law, which may provide rights in such things as O&M Activities, O&M Information, Confidential Information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes, show-how or know-how generally, or the expression or use of such things as O&M Activities, O&M Information, Confidential Information, trade-marks, ideas, formulae, algorithms, concepts, inventions, processes, show-how or know-how;
- (b) any and all applications, registrations, licences, sub-licences, franchises, agreements or any other evidence of a right in any of the foregoing; and
- (c) all (i) licences and waivers and benefits of waivers of, (ii) future income and proceeds from, and (iii) rights to damages and profits by reason of the infringement or violation of, any of the intellectual property rights set out in paragraphs **(a)** and **(b)** of this definition;

“JOC” means the joint operations committee continued pursuant to **Section 3.1**;

“JOC Matters” has the meaning set forth in **Section 3.3(b)**;

“Knowledge” means in the case of either Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Labrador-Island Link” or **“LIL”** means the transmission facilities to be constructed by or on behalf of the Labrador Island Link Limited Partnership from central Labrador to Soldiers Pond, NL;

“Labrador Transmission Assets” or **“LTA”** means the transmission facilities to be constructed by an Affiliate of Nalcor between the Muskrat Falls Plant and the generating plant located at Churchill Falls, NL;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“Licensing Party” has the meaning set forth in **Section 15.3(f)**;

“Long Term Asset Management Plan” or **“LTAMP”** means, for each of the Defined Assets, a plan describing and quantifying the O&M Activities, in the case of the Transmission Assets, or the MFP Operating and Maintenance Activities, in the case of the MFP, for the Defined Asset for each year of its Initial Service Life in sufficient detail to determine the estimated annual Operating and Maintenance Costs, including:

- (a) a description of each activity, including at a minimum routine annual O&M Activities and major asset component inspections, overhauls, retirements and replacements which do not occur annually; and
- (b) the expected year of the occurrence of each such activity;

“Losses” means any and all losses (other than losses of Energy normally incurred in the transmission of Energy), damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

“MFP Operating and Maintenance Activities” means the performance of work or the provision of services and the supply of equipment, materials, facilities and other resources required in respect of the MFP after the completion of commissioning thereof, including the incurring of Operating and Maintenance Costs;

“ML Basis of Design” means the Basis of Design, as defined in the ML-JDA, of the Maritime Link as at the Commercial Operation Date;

“ML Cost of Capital Rate” means a rate of interest equal to the pre-tax weighted average cost of capital as accepted by the UARB for the ML Project as of the time when the In-Service LTAMP Cost Estimates are finalized;

“ML Data” means, in respect of the Maritime Link, all data, documents, reports, analyses, tests, specifications, charts, plans, drawings, ideas, schemes, correspondence, communications, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operations, know-how, trade or other secrets, contracts, Maritime Link financial information, engineering reports, environmental reports, information concerning Facility Real Property Interests, sketches, photographs, computer programs, records or software (in both source code and object code form), specifications, models or other information resulting from O&M Activities, and includes the media on which such data and information are stored, obtained or received by either Party;

“ML O&M Costs” means the Operating and Maintenance Costs of the Maritime Link; provided however that, for greater certainty, ML O&M Costs does not include any Maritime Link Life Extension Costs or any costs of a Redevelopment of the Maritime Link;

“ML Project” has the meaning set forth in the ML-JDA;

“MW” means megawatt;

“MWh” means MW hours;

“Manager” means:

- (a) Nalcor, or one or more Nalcor Affiliate Assignees, with reference to the application of this Agreement to the NL Transmission Assets; and
- (b) Emera, or an Emera Affiliate Assignee, with reference to the application of this Agreement to the Maritime Link;

“Maritime Link” or **“ML”** has the meaning set forth in the ML-JDA;

“Maritime Link Joint Development Agreement” or **“ML-JDA”** means the agreement dated July 31, 2012 between Nalcor and Emera relating to the development of the Maritime Link;

“Maritime Link Life Extension Costs” means, with respect to the Maritime Link, operating and maintenance costs that are incremental to the Operating and Maintenance Costs required in accordance with Good Utility Practice to provide a Service Life of the Maritime Link no greater than its Initial Service Life; provided however that, for greater certainty, where the service life of a replacement for a major component of the Maritime Link extends beyond the Initial Service Life of the Maritime Link:

- (a) if the replacement component is the lowest life cycle cost option to maintain the Service Life of the Maritime Link to at least its Initial Service Life, the life cycle cost of the replacement is not a Maritime Link Life Extension Cost; or
- (b) if the replacement component is not the lowest life cycle cost option to maintain the Service Life of the Maritime Link to at least its Initial Service Life, the incremental life

cycle cost of the replacement component above the corresponding cost of the lowest life cycle cost option is a Maritime Link Life Extension Cost.

“Maritime Link Life Extension Project” means a capital project or a modification to a capital project which is not required to ensure the Service Life of the Maritime Link will be at least its Initial Service Life and if undertaken would result in the extension of the Service Life of the Maritime Link beyond the Initial Service Life or which would enable a future extension of the Service Life of the Maritime Link beyond the Initial Service Life;

“Maritime Link Site” means a parcel of real property upon, over or under which any part of the Maritime Link is located;

“Maritime Link (Nalcor) Transmission Service Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera relating to Transmission Rights on the Maritime Link other than in respect of the Nova Scotia Block;

“Marketing Personnel” means a natural Person who, individually or on behalf of any other Person, sells or purchases for consumption or resale Capacity, Energy, Energy derivatives and ancillary services in the wholesale power markets, and includes any natural Person who conducts such transactions on behalf of transmission service customers, power exchanges, transmission owners that are not also a System Operator, load serving entities, loads, holders of Energy derivatives, generators and other power suppliers and their designated agents;

“Muskrat Falls Plant” or **“MFP”** means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be constructed by an Affiliate of Nalcor;

“NL” means the Province of Newfoundland and Labrador;

“NL Crown” means Her Majesty the Queen in Right of NL;

“NL Transmission Assets” means the LIL and the LTA;

“NLH” means Newfoundland and Labrador Hydro, a corporation incorporated under the laws of NL, and includes its successors;

“NS” means the Province of Nova Scotia;

“NSPI” means Nova Scotia Power Inc., a company incorporated under the laws of NS, and includes its successors;

“NS Regulatory Application” has the meaning set forth in the ML-JDA;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“Nalcor Affiliate Assignee” means an Affiliate of Nalcor to which all or any portion of the Nalcor Rights have been assigned in accordance with **Section 16.1**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

“Nalcor Background IP” means the Intellectual Property Rights owned by Nalcor or its Affiliates which are Used in the Transmission Assets but which are not Nalcor Foreground IP;

“Nalcor Default” has the meaning set forth in **Section 11.3**;

“Nalcor Foreground IP” means the Intellectual Property Rights conceived, developed or reduced to practice by Nalcor, its Affiliates or employees of Nalcor or its Affiliates, whether or not Used in the Transmission Assets, the costs of which are Operating and Maintenance Costs (other than costs attributable to the Muskrat Falls Plant), which conception, development or reduction to practice arose out of performance of Nalcor’s O&M Activities, or assigned to Nalcor or its Affiliates by an O&M Contractor pursuant to an O&M Contract;

“Nalcor Group” has the meaning set forth in **Section 12.2**;

“Nalcor IP” means the Nalcor Background IP and the Nalcor Foreground IP;

“Nalcor Rights” has the meaning set forth in **Section 16.1(a)**;

“New Taxes” means:

- (a) any Tax exigible pursuant to Applicable Law which comes into force after the Effective Date; and
- (b) any change to a Tax exigible pursuant to Applicable Law which comes into force after the Effective Date;

“Newfoundland and Labrador Development Agreement” or **“NLDA”** means the agreement dated July 31, 2012 among Nalcor, Emera and other parties relating to, among other things, the Labrador-Island Link;

“Non-Commercializing Party” has the meaning set forth in **Section 15.5(c)**;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 18.1**;

“Nova Scotia Block” has the meaning set forth in the Energy and Capacity Agreement;

“O&M Activities” means the performance of work or the provision of services and the supply of equipment, materials, facilities and other resources required in respect of the Transmission Assets after the completion of Commissioning thereof, including the incurring of Operating and Maintenance Costs;

“O&M Contract” means a contract to perform work or provide services, equipment, materials, facilities or supplies forming part of or procured in connection with the O&M Activities;

“O&M Contractor” means a Person who enters into an O&M Contract with a Manager;

“O&M Information” has the meaning set forth in **Section 3.3(d)**;

“O&M Owned IP” means the Emera Foreground IP and the Nalcor Foreground IP;

“O&M Standards” means the policies, procedures, practices and standards established or adopted and Approved by the JOC relating to the operation and maintenance of the Transmission Assets in accordance with Good Utility Practice for a long-term, low cost, reliable transmission facility, including monitoring and reporting on asset performance, frequency and scope of major inspections, applicable industry standards to apply in asset operation and maintenance, completion of LTAMP, and the maintenance of appropriate critical spares;

“Operating and Maintenance Costs” means all costs attributable to the Defined Assets, or any of them individually as the context requires, incurred after the Commissioning thereof that are reasonable in relation to the circumstances in which, and the time at which, they were incurred in accordance with Good Utility Practice, including operating and maintenance costs, administration costs, sustaining capital costs and major capital costs, and all other costs incurred to operate and maintain the Defined Asset, excluding Defined Asset Life Extension Costs and costs of a Redevelopment, and excluding CEO Override Costs;

“Operating Year” means (i) a calendar year during the Term, except that the first Operating Year will commence on the Commercial Operation Date and end on December 31 of the calendar year in which such date occurs, and the last Operating Year will end on the Expiry Date or other termination of the Term, or (ii) such other fiscal period as may be mutually agreed in writing by the Parties;

“Operation and Maintenance Manual” means a document or a collection of documents describing the basis of design of the Transmission Asset and each of the Transmission Asset’s major components, the Transmission Asset’s design engineer’s recommendation for operating procedures and parameters, routine preventative maintenance, HSE procedures, periodic inspections and containing references to each original equipment manufacturer’s manuals for operating and maintenance of their provided equipment, spare parts requirements, and special tools and equipment;

“Operational Control” means security monitoring, adjustment of transmission resources, coordinating and approval of changes in transmission status for maintenance, determination of transmission status for reliability, coordination with applicable Authorized Authorities, voltage reductions and load shedding, except that each owner of transmission resources otherwise continues to physically operate and maintain its own facilities;

“Original JOA” has the meaning set forth in the preamble to this Agreement;

“PUB” means the Board of Commissioner of Public Utilities established pursuant to the *Public Utilities Act* (Newfoundland and Labrador), or any successor performing substantially the same functions;

“Parties” means the parties to this Agreement, and **“Party”** means one of them;

“Payee” has the meaning set forth in **Section 5.8(a)**;

“Payor” has the meaning set forth in **Section 5.8(a)**;

“Permitted Encumbrances” means, with respect to the Maritime Link:

- (a) liens or other encumbrances imposed or permitted by Applicable Law such as carriers’ liens, warehousemen’s liens, builders’ liens and other liens or other charges of a similar nature; provided such liens and other charges relate to obligations not due or delinquent;
- (b) undetermined or inchoate liens and other encumbrances incidental to O&M Activities which have not at such time been filed pursuant to Applicable Law or which, if filed, relate to obligations not due or delinquent or the validity of which is being contested at the time in good faith by appropriate proceedings diligently conducted and such inchoate liens and other encumbrances do not cause a material adverse effect on the Parties’ interests in the Maritime Link;
- (c) liens for Taxes, assessments, duties, fees, premiums, imposts, levies and other charges imposed by any Authorized Authority that are not at such date due or delinquent or the validity of which is being contested at the time in good faith by appropriate proceedings diligently conducted and there is no imminent risk of forfeiture;
- (d) public and statutory obligations which are not due or delinquent or the validity of which is being contested at the time in good faith by appropriate proceedings diligently conducted and such obligations do not cause a material adverse effect on the Parties’ interests in the Maritime Link;
- (e) security created in connection with the financing of Development Activities (as defined in the ML-JDA) related to the Maritime Link;
- (f) provided that it is subordinate in all respects to all security referred to in paragraph **(e)** of this definition, security created after the Commercial Operation Date by the owner of the Maritime Link; and
- (g) notices, caveats or other documents in form satisfactory to the Parties, acting reasonably, and suitable for registration at the NL Registry of Companies and Deeds or a land registration office established under the Land Registration Act (Nova Scotia) or under the Personal Property Security Act (Newfoundland and Labrador)

and the Personal Property Security Act (Nova Scotia) evidencing Nalcor's rights to acquire ownership of the Maritime Link,

provided however that in any circumstance provided herein where the interests of Emera in the Maritime Link are required to be conveyed from Emera to Nalcor, any outstanding amounts owing in respect of any of the foregoing or defaults applicable thereto which could result in amounts so owing shall not be comprised within the scope of this definition for any purpose, and shall be paid or discharged forthwith and in any event on or before the time at which that conveyance is, or is required to be, completed on the basis provided for herein;

"Person" includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

"Prime Rate" means the variable rate of interest per annum expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by The Bank of Nova Scotia, or any successor thereto, as its reference rate for the determination of interest rates that it will charge on commercial loans in Canadian dollars made in Canada;

"Project NDA" means the Restricted Use and Non-Disclosure Agreement dated June 20, 2011 between Nalcor and Emera;

"Recipient Party" has the meaning set forth in **Section 17.2(a)**;

"Redevelopment" means one or more programs of activities undertaken to replace major components of a Defined Asset, resulting in a restarted Service Life of a Defined Asset and for greater clarity, excludes normal maintenance activities or activities relating to sustaining capital reinvestment to ensure full operation of the Defined Asset during its Service Life;

"Regular Business Hours" means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John's, NL, when referring to the Regular Business Hours of Nalcor, and 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS, when referring to the Regular Business Hours of Emera;

"Regulatory Approval" means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

"Reliability Incident" means an incident involving the performance of a Transmission Asset which results in the applicable System Operator taking action to ensure the reliability of the NS bulk energy transmission system or the NL bulk energy transmission system;

"Representatives" means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party and Affiliates of a Party;

“Required Condition” means, with respect to the Maritime Link, in good operating condition to a standard consistent with having been operated and maintained throughout the Term in accordance with (i) Good Utility Practice for a long-term, low cost, reliable transmission facility with a Service Life equal to the Initial Service Life while maintaining reliable operation consistent with the ML Basis of Design, (ii) the Long Term Asset Management Plan for the Maritime Link, and (iii) the O&M Standards;

“Sanction” means, in respect of the MFP and the NL Transmission Assets, MFP Sanction, LIL Sanction and LTA Sanction, respectively, each as defined in the NLDA; provided however that for the purposes of **Section 1.6**, **“Sanction”** has the meaning set forth in the Original JOA;

“Sanction Agreement” means the agreement dated December 17, 2012 between Nalcor and Emera;

“Service Life” means:

- (a) with reference to the Transmission Assets, the period of time immediately following Commissioning during which each of the Transmission Assets can continue to transmit Energy and Capacity at required reliability levels, and for greater clarity, a new Service Life will be established upon any Redevelopment of a Transmission Asset; and
- (b) with reference to the MFP, the period of time immediately following commissioning of the MFP during which the MFP can continue to produce electricity at required output and reliability levels, and for greater clarity, a new Service Life will be established upon any Redevelopment of the MFP;

“Special Items” has the meaning set forth in **Section 7.4(c)(iii)(A)**;

“Specified Dispute” has the meaning set forth in the Dispute Resolution Procedure;

“Supporting Material” has the meaning set forth in **Section 5.8(a)**;

“System Operator” means, as applicable, (i) the NSPI System Operator, a functionally separate division of NSPI responsible for the safe and reliable operation of the electricity system in NS, or any successor performing this role, in respect of NS, and (ii) the system operations department of NLH responsible for the safe and reliable operation of the electricity system in NL, or a functionally separate division of NLH performing this function, or any successor performing this role, as applicable, in respect of NL;

“Tariff Charges” means any charges arising pursuant to a tariff or other schedule of fees in respect of electricity transmission services;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than

Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Term” has the meaning set forth in **Section 10.1**;

“Term Sheet” has the meaning set forth in the preamble to this Agreement;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

“Third Party Claim” means a Claim referred to in **Section 12.1** or **12.2**;

“Third Party IP Rights” means Intellectual Property Rights owned by a third party;

“Third Party Licensed IP” means the Third Party IP Rights licensed by a third party to Nalcor or its Affiliates, or to Emera or its Affiliates, for Use in connection with performance of the O&M Activities;

“Transfer Closing” has the meaning set forth in **Section 7.1(a)**;

“Transfer Date” means the date on which the Transfer Closing is completed pursuant to **Section 7.1(e)**;

“Transmission Assets” means the Labrador-Island Link, the Maritime Link and the Labrador Transmission Assets;

“Transmission Operating Agreement” means an agreement entered into between a Manager and a System Operator to permit the System Operator to offer transmission operating services over the Transmission Assets under which operating control (as defined in such agreement) of such Transmission Asset is transferred from the Manager to the System Operator;

“Transmission Rights” means contractual rights to receive transmission service on specifically identified transmission infrastructure and transmission congestion rights;

“UARB” means the body established pursuant to the UARB Act or any successor performing substantially the same functions;

“UARB Act” means the *Utility and Review Board Act* (Nova Scotia);

“US GAAP” means generally accepted accounting principles as defined by the Financial Accounting Standards Board or its successors, as amended from time to time;

“Unrecovered Additional O&M Costs” has the meaning set forth in the ML-JDA;

“Use” means to do anything which the owner of an Intellectual Property Right has the right to do, or the right to prevent another from doing; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 **Construction of Agreement**

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with US GAAP except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, each Party shall use commercially reasonable efforts to provide the other Party with all of the information it needs to prepare its accounting records in accordance with US GAAP or Canadian GAAP, as applicable.

- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “approved”, “decided” or “determined” by a Party or requires a Party’s or its Representative’s “consent”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Wherever a provision of this Agreement states that:

- (i) **Section 1.2(m)(i)** applies, in respect of the matters referred to in that provision:
 - (A) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing;
 - (B) any failure, inability or refusal of either Party or both Parties to reach agreement shall constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure;
 - (C) such Dispute shall be resolved as a Specified Dispute if so specified in such provision; and
 - (D) if such Dispute is not a Specified Dispute, the Parties will be deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve the Dispute by arbitration; or
- (ii) **Section 1.2(m)(ii)** applies, in respect of the matters referred to in that provision:
 - (A) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing; and
 - (B) the failure, inability or refusal of either Party or both Parties to reach agreement for any reason whatsoever will not constitute a Dispute and such matters are not subject to resolution pursuant to the Dispute Resolution Procedure.

1.3 Conflicts between Parts of Agreement

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any document delivered pursuant to this Agreement, the provision of the body of this Agreement shall prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 17**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

The following are the Schedules attached to and incorporated by reference in this Agreement, which are deemed to be part of this Agreement:

- Schedule 1 - Dispute Resolution Procedure
- Schedule 2 - Formal Agreements
- Schedule 3 - Form of Assignment Agreement

1.6 Inter-Relationship with Original JOA

Effective as of the A&R Effective Date, this Agreement amends and restates the Original JOA in its entirety, it being understood and agreed that all liabilities and obligations under the Original JOA existing or arising with respect to occurrences prior to the A&R Effective Date will survive and continue to exist, and neither of the Parties is waiving any of its rights or remedies in respect thereof; provided however that obligations defined with reference to Sanction in the Original JOA will be deemed to exist or arise only as provided in this Agreement.

ARTICLE 2 TRANSMISSION ASSET MANAGERS AND SYSTEM OPERATORS

2.1 Transmission Asset Managers

- (a) Operation and Maintenance of NL Transmission Assets - From and after the completion of Commissioning, Nalcor shall, with respect to the NL Transmission Assets:
 - (i) develop and maintain a Long Term Asset Management Plan for the Service Life of the NL Transmission Assets;
 - (ii) perform or cause to be performed all O&M Activities;
 - (iii) discharge and fulfil, or cause to be discharged and fulfilled, all of the duties and responsibilities of the Manager; and
 - (iv) pay all of the Operating and Maintenance Costs,
 all in accordance with the provisions of this Agreement and Applicable Law.
- (b) Operation and Maintenance of Maritime Link - From and after the completion of Commissioning, Emera shall, with respect to the Maritime Link:
 - (i) develop and maintain a Long Term Asset Management Plan for the Service Life of the Maritime Link;
 - (ii) perform or cause to be performed all O&M Activities;

- (iii) discharge and fulfil, or cause to be discharged and fulfilled, all of the duties and responsibilities of the Manager;
- (iv) pay all of the ML O&M Costs; and
- (v) maintain the Maritime Link in the Required Condition,

all in accordance with the provisions of this Agreement and Applicable Law.

2.2 Relationship with System Operators

- (a) Consultation with JOC - Prior to entering into each Transmission Operating Agreement, each Manager shall consult with the JOC with respect to the proposed terms and conditions thereof. The JOC shall promptly provide comments, if any, to the Manager on such terms and conditions. Each Manager shall make a good faith effort to take into account any comments made by the JOC that are consistent with the Applicable Regulator's rules and policies.
- (b) Transfer of Operational Control - As of the In-Service Date of each Transmission Asset, the Manager of that Transmission Asset shall transfer Operational Control over the Transmission Asset to the appropriate System Operator in accordance with the applicable Transmission Operating Agreement. Each Manager shall provide, and cause its Affiliates to provide, such information as the System Operators may require to discharge their obligations under the Transmission Operating Agreements, and each Manager shall comply with the instructions of the System Operators to the extent provided in the Transmission Operating Agreements.
- (c) Release from Liability - The Parties acknowledge and agree that neither Manager shall be in breach of, or be liable to the other Manager under this Agreement, and no default shall occur, as a consequence of a Manager's compliance with such instructions of a System Operator, provided that the Manager did not initiate or support instructions that would otherwise breach that Manager's obligations under this Agreement.

ARTICLE 3 JOINT OPERATIONS COMMITTEE

3.1 Establishment and Duration of JOC

The joint operations committee established by the Parties for the Transmission Assets consisting of representatives from each of Nalcor and Emera shall be continued. From time to time the Parties may appoint other representatives in replacement of those initially named.

3.2 JOC Composition, Quorum, Duration and Procedures

- (a) Composition - The JOC shall at all times be comprised of four representatives appointed by Nalcor and two representatives appointed by Emera. Nalcor shall

designate one of its representatives on the JOC as the chair. Emera shall designate one of its representatives on the JOC as the vice-chair. Where the chair or vice-chair is unable to act, he or she may from time to time delegate his or her responsibilities to another representative of, respectively, Nalcor or Emera, on the JOC.

- (b) Quorum - Subject to **Section 3.5(k)**, the quorum for the transaction of business by the JOC shall be two Nalcor representatives and one Emera representative.
- (c) Duration - Following its establishment pursuant to **Section 3.1**, the JOC shall continue until the expiry or other termination of the Term.
- (d) Procedures - Except as otherwise provided for in this Agreement, the JOC shall establish procedures for the conduct of its affairs.
- (e) Appointment of Sub-Committees - From time to time, as it deems appropriate, the JOC may appoint standing, due diligence or other teams or sub-committees. Nalcor and Emera are each entitled to have at least one representative appointed to each sub-committee of the JOC.

3.3 Manager Submissions and Responsibilities of the JOC

- (a) Coordination of O&M Activities - The JOC shall meet on a regular basis in order to coordinate the operation and maintenance of the Transmission Assets, as provided in this Agreement.
- (b) JOC Review of Certain Matters - Each Manager, with respect to the Transmission Assets for which it is responsible, shall submit to the JOC in a timely manner the following (the “**JOC Matters**”):
 - (i) the Manager’s proposed Annual Maintenance Plans in accordance with **Section 4.2(a)**;
 - (ii) not later than four months before the Commissioning of the relevant Transmission Asset, the Operation and Maintenance Manual for that Transmission Asset;
 - (iii) Transmission Asset inspection and condition reports completed by the Manager’s engineers, original equipment manufacturers, O&M Contractors, lenders’ engineers, insurance providers’ engineers or other Persons completing such reports;
 - (iv) other items to be Approved by the JOC; and
 - (v) prior to implementation by the Manager, any changes or updates to any of the foregoing.

The JOC shall review, consider and endeavour to reach consensus as to the JOC Matters submitted by the Managers pursuant to this **Section 3.3(b)**. If the JOC

reaches consensus on a JOC Matter, either initially or after revisions requested by the JOC, the JOC Matter will be considered Approved by the JOC and the applicable Manager shall implement the O&M Activities and other matters referred to in the JOC Matter in the manner Approved by the JOC. If the JOC fails to reach consensus on a JOC Matter, the issues preventing consensus shall be resolved pursuant to **Section 3.4**.

- (c) O&M Standards - The JOC, from time to time during the Term, may determine the O&M Standards required by the JOC to be adopted, followed or maintained by the Managers in carrying out the O&M Activities for the Transmission Assets. Any such requirement of the JOC must comply with Good Utility Practice for a long-term, low cost, reliable transmission facility at the relevant time. Each Manager shall implement any such directive of the JOC within such reasonable time as may be set by the JOC.
- (d) Other Information for Coordination - Each Manager, with respect to the Transmission Assets for which it is responsible, shall, in a timely manner and on an ongoing basis during the Term, as and when such information becomes available, submit to the JOC the following ("**O&M Information**"):
 - (i) annually, a list of the material O&M Contracts, including the scopes of work thereunder and names of the O&M Contractors;
 - (ii) copies of material communications with Authorized Authorities relating to operations, including communications with environmental regulators, periodic regulatory reports and correspondence relating to disputes with Authorized Authorities;
 - (iii) annually within 30 days after policy renewal, certificates of insurance or other appropriate evidence that the insurance required by **Article 9** is in place;
 - (iv) reports of O&M Activities pursuant to **Section 6.4**;
 - (v) updates and revisions of the LTAMPs;
 - (vi) such other information as the JOC may reasonably require; and
 - (vii) in the case of Emera, descriptions of and preliminary cost estimates for any opportunities for Maritime Link Life Extension Projects that may be undertaken as part of the O&M Activities on the Maritime Link.

The JOC shall review and may consider the O&M Information when making its determinations pursuant to **Sections 3.3(b)** and **3.3(c)**.

- (e) Approval Conditions Permitted - The JOC may Approve any matters for which its Approval is required under this Agreement subject to such conditions as it may

direct, and it may also direct that amendments be made to any matters submitted to it for Approval.

- (f) Support for Approvals - Each Manager shall cause all matters that are to be Approved by the JOC under this Agreement to be brought before the JOC in a timely manner, and shall provide to the JOC all related background information and any other information requested by the JOC.

3.4 JOC Decision Making

- (a) Decision by Consensus - The Nalcor representatives and Emera representatives shall cooperate and share all relevant information so as to reach consensus on issues.
- (b) Resolution of Financial Matters Where No Consensus - Subject to **Section 3.4(e)**, if the JOC is unable to reach a consensus in respect of a Financial Matter pursuant to **Section 3.3(b)**, as confirmed by a vote in accordance with **Section 3.5(j)**:
 - (i) each Party may make separate representations to the Applicable Regulator in respect of the matter, and the Manager responsible for the Financial Matter shall facilitate such representations as provided for in **Section 4.5**;
 - (ii) in any application or submission to an Applicable Regulator with respect to a Financial Matter, the Parties shall jointly request the Applicable Regulator to make its determination of the Financial Matter in a manner consistent with each Party's obligations under this Agreement (including Emera's obligation to maintain the Maritime Link in a manner consistent with its Initial Service Life and to transfer the Maritime Link to Nalcor in the Required Condition); and
 - (iii) subject to **Section 3.4(d)**, to the extent that the Applicable Regulator accepts the request of the Parties for a determination and makes a determination of the issue submitted to it, the Applicable Regulator's determination will be final and binding on the Parties, and the Parties shall promptly take such action as may be required to comply with the determination.
- (c) Matters Not Determined by Applicable Regulator - With respect to a Financial Matter in respect of which the JOC fails to reach a consensus, where:
 - (i) the matter is not within the power of the Applicable Regulator to determine;
 - (ii) the Applicable Regulator declines to hear the matter or make a determination; or
 - (iii) no application is planned or pending and the nature of the Dispute is such that the Manager required to do the work would not support the application,

the Financial Matter shall be considered to be a Dispute and shall be resolved pursuant to the Dispute Resolution Procedure. The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve any such Dispute by arbitration.

- (d) Non-Conforming Regulator Determination - If the Applicable Regulator makes a determination pursuant to **Section 3.4(b)** and a Party considers that the determination did not conform with the requirements of this Agreement, contrary to the request made to the Applicable Regulator as contemplated by **Section 3.4(b)(ii)**, that Party may give Notice to that effect to the other Party specifying how the Applicable Regulator's determination is non-conforming and setting out the determination that the Party considers the Applicable Regulator should have made. If such Notice is given and the Parties are unable to resolve the matter within 15 days of the delivery of the Notice, the matter shall be considered to be a Dispute and may be referred by either Party for resolution pursuant to the Dispute Resolution Procedure. The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve any such Dispute by arbitration.
- (e) Resolution of Other JOC Matters Where No Consensus - If the JOC is unable to reach a consensus decision in respect of a JOC Matter, other than a Financial Matter, pursuant to **Section 3.3(b)**, the matter shall be resolved by a decision of the JOC made by majority vote at a duly constituted meeting of the JOC.
- (f) Costs of Disputes - Each Party shall bear its own costs in connection with any proceeding before an Applicable Regulator to determine a Financial Matter pursuant to **Section 3.4(b)**. Notwithstanding anything contained in the Dispute Resolution Procedure, if a Party refers a matter for resolution pursuant to **Section 3.4(d)** and is not substantially successful in such proceeding, that Party shall bear its own costs and all reasonable costs incurred by the other Party in connection with the proceeding pursuant to the Dispute Resolution Procedure, as well as the costs of such proceeding.

3.5 Meetings of JOC

- (a) Regular Meetings - The JOC shall meet not less frequently than annually during the Term in accordance with the schedule determined by the JOC, or at such more frequent intervals as the JOC may decide from time to time to be appropriate.
- (b) Calling of Meetings - Either the chair or the vice-chair may call a meeting of the JOC by issuing a notice to the other to that effect. Either Party may request a meeting of the JOC by issuing a notice to the chair or the vice-chair of the JOC to that effect. Upon receiving notice of a requested meeting, the chair or the vice-chair, as applicable, shall promptly call for a meeting by issuing a notice to the other to that effect. Any meeting shall, except as otherwise provided in this Agreement, be for a date not less than five days following the sending of the notice of meeting by the chair or the vice-chair, as applicable.

- (c) Waiver of Notice - Except as otherwise provided for in this Agreement, including those circumstances described in **Section 3.5(d)**, the notice periods set forth in **Sections 3.5(b)** and **3.5(f)** may only be waived with the unanimous consent of the JOC.
- (d) Abridgement of Notice Period - For any situations involving, or potentially involving:
 - (i) the actual or imminent threat of loss of life or injury or damage to property or the environment; or
 - (ii) a required response to a notice that must be made prior to the expiry of the notice,

the advance notice period for calling a meeting of the JOC may be abridged to such period as is reasonable in the particular circumstances, and any such meeting shall nonetheless be considered duly constituted.
- (e) Meeting Notice Particulars - Each notice of a meeting of the JOC (including regular meetings scheduled under **Section 3.5(a)** for which notice shall be provided in accordance with the time limits set out in **Section 3.5(b)**) shall be provided by the chair or vice-chair as determined by the JOC and shall contain:
 - (i) the date, time and location of the meeting; and
 - (ii) an agenda of the matters and proposals to be considered at the meeting together with sufficient information to permit the other JOC members to properly and effectively consider the matters to be discussed at such meeting.
- (f) Additions to Agenda - A member of the JOC may, by notice to the other members given not less than three days prior to a meeting of the JOC, add matters to the agenda for that meeting, provided sufficient information is provided with such notice to permit the other JOC members to properly and effectively consider the matters to be discussed at such meeting.
- (g) Non-Agenda Matters - At the request of a member of the JOC, and provided both the chair and the vice-chair or their delegates consent, the JOC may, at any meeting of the JOC, consider and decide on any matter not otherwise on the agenda for that meeting.
- (h) Location of Meetings - Meetings of the JOC shall generally be held in St. John's, NL, and Halifax, NS, and may be held at such other locations as may be determined by the JOC.
- (i) Chair's Duties for Meetings - With respect to meetings of the JOC, the chair's duties shall include:

- (i) timely preparation and distribution of the notice of meeting, the draft agenda and supporting material;
- (ii) organization and conduct of the meeting; and
- (iii) preparation of written minutes of the meeting.

If the chair fails to perform his or her duties, such duties may be performed by the vice-chair.

- (j) Authority to Vote - The JOC shall operate on the basis of consensus, but in order to determine if consensus exists, votes may be required. The representatives of a Party on the JOC must be duly authorized to represent that Party with respect to any matter that is within the powers of and properly before the JOC. The Nalcor representatives and the Emera representatives shall separately determine the positions of Nalcor and Emera respectively, and each representative shall be entitled to one vote. If the two positions are not or cannot be brought to agreement, consensus has not been achieved.
- (k) Failure to Achieve Quorum - If a quorum for a meeting of the JOC is not present at an otherwise duly constituted meeting of the JOC, that meeting shall be adjourned, but may be reconvened upon not less than five days' prior notice given by any member of the JOC to the other members of the JOC, and at such subsequent meeting the persons attending shall constitute a quorum.
- (l) Advisors - Each Party may, at its cost, or as otherwise agreed by the Parties, also bring to any JOC meeting such reasonable number of technical and other advisors it considers necessary or appropriate to address the matters being considered at the meeting.
- (m) Telephone or Video Conference Meetings - Participation in JOC meetings for purposes of determining a quorum and otherwise may be by telephone or other electronic telecommunication or video conference device that permits all Persons participating in the meeting to hear and communicate with each other simultaneously, and all Persons so participating shall be considered present at that meeting for all purposes.
- (n) Minutes - The chair or the vice-chair presiding at a meeting of the JOC shall provide each member of the JOC with draft minutes of each JOC meeting within 14 days following the meeting. The minutes shall be considered for approval at the next meeting of the JOC.

3.6 Resolution in Writing

An original, facsimile copy or other electronic image copy of a resolution of the JOC signed by the chair and the vice-chair or their delegates shall be effective as if passed at a duly called meeting of the JOC.

3.7 Decisions of JOC Binding

Except as otherwise expressly provided in this Agreement, all decisions of the JOC shall be conclusive and binding on both Parties for all purposes.

3.8 Costs of JOC Participation

Each Party shall bear its own internal costs, and the Parties shall share equally all third party costs, related to the administration of the JOC.

ARTICLE 4 PERFORMANCE OF O&M ACTIVITIES

4.1 Managers' Responsibilities

Each Manager, with respect to the Transmission Assets for which it is responsible, shall:

- (a) exercise final operational responsibility and control for the Transmission Asset, except as otherwise provided in this Agreement;
- (b) in the conduct of all O&M Activities for which it is responsible, considering the remaining Service Life and, in the case of the Maritime Link, the Required Condition:
 - (i) apply methods and practices customarily applied in other similar circumstances;
 - (ii) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;
 - (iii) comply with all regulatory requirements of the Applicable Regulator; and
 - (iv) comply with Good Utility Practice;
- (c) ensure that all O&M Activities are performed pursuant to the applicable Annual Maintenance Plan Approved by the JOC, with only those variations as are necessary and appropriate for the operation and maintenance of the Transmission Asset in accordance with Good Utility Practice;
- (d) provide adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations, including professional engineers and procurement, project management and operating and maintenance personnel;
- (e) obtain and maintain in good standing all required Regulatory Approvals;

- (f) comply with all Applicable Law (including System Operator rules to the extent applicable), reliability standards as required by the applicable Authorized Authority in the Manager's jurisdiction, and relevant Regulatory Approvals; and
- (g) in the case of Emera with respect to the Maritime Link, maintain all Facility Real Property Interests in full force and effect, including enforcing Emera's rights under the Facility Real Property Interests against third parties, and in the case of Nalcor, maintain and enforce its similar interests relating to the NL Transmission Assets.

4.2 **Annual Maintenance Plan**

- (a) **Preparation and Approval of Plans** - Each Manager, with respect to the Transmission Assets for which it is responsible, shall prepare and maintain an annual maintenance plan (the "**Annual Maintenance Plan**") setting out the O&M Activities to take place in each Operating Year, including required equipment outages and their durations, and where appropriate in accordance with Good Utility Practice, O&M Activities to take place in subsequent Operating Years, containing such information as may be reasonably required by the JOC. Each Manager's proposed Annual Maintenance Plan for:
 - (i) the first Operating Year shall be submitted to the JOC for Approval not later than four months prior to the anticipated Commissioning date of the Transmission Assets for which the Manager is responsible; and
 - (ii) each subsequent Operating Year shall be submitted to the JOC for Approval during the eighth month of the then-current Operating Year.
- (b) **Coordination** - The Managers shall work together with the System Operators to ensure that the Annual Maintenance Plans for each of the Transmission Assets are coordinated in order to obtain efficiencies and to minimize the impact on the NL and NS bulk energy transmission systems.

4.3 **Operations & Maintenance Manual**

- (a) **Preparation of Manual** - Each Manager, with respect to the Transmission Assets for which it is responsible, shall prepare and maintain an Operations and Maintenance Manual setting out the policies and procedures it shall adopt and implement in carrying out the O&M Activities. The content of the Operation and Maintenance Manual shall be consistent with requirements of this Agreement and shall provide for the operation and maintenance of the Transmission Assets in accordance with the O&M Standards. During the Term, each Manager shall remain responsible for its Operation and Maintenance Manual and shall keep it current by making necessary updates, supplements or revisions thereto to reflect the O&M Standards. Each Manager shall promptly supply the JOC with one copy of any such updates, supplements or revisions in a form established by the JOC.

- (b) Effect of JOC Approval - Neither the JOC's review of or comment upon nor failure to comment upon, nor Approval of, the Operation and Maintenance Manual shall relieve the Manager of any of its responsibilities under this Agreement, be deemed to constitute a determination by the JOC that operating the Transmission Assets pursuant to the Operation and Maintenance Manual will cause the Transmission Assets to be in compliance with this Agreement and the O&M Standards, or impose any liability upon either Party with respect to the Transmission Asset under the other Party's responsibility or the other Party's O&M Activities.

4.4 Operation and Maintenance Contractors

- (a) Manager to Contract - Each Manager, with respect to the Transmission Assets for which the Manager is responsible, shall be responsible for entering into O&M Contracts as are reasonably necessary in order to permit the Manager to carry out its O&M Activities. No such contracting by a Manager will relieve the Manager from any of its obligations or liabilities pursuant to this Agreement.
- (b) Contracts for Maritime Link O&M Activities - Emera shall include in all O&M Contracts provisions permitting assignment of the contract to Nalcor or an Affiliate of Nalcor as contemplated by this Agreement, without the contractor's consent. Emera shall provide Nalcor with copies of all O&M Contracts and, during the last five years of the Term, shall permit Nalcor to comment on O&M Contracts prior to commitment by Emera, to facilitate appropriate transfer to Nalcor at the end of the Term.

4.5 Regulatory Approvals

Each Manager, with respect to the Transmission Assets for which the Manager is responsible, shall be responsible for making all regulatory applications to, in the case of the Maritime Link, the UARB, and in the case of the Labrador Transmission Assets and the Labrador-Island Link, the PUB or other Authorized Authority, including all necessary approvals for the Operating and Maintenance Costs. The Parties understand and agree that if they are unable to reach consensus on a Financial Matter, the Managers shall work with both Parties and the PUB or other Authorized Authority and the UARB to ensure that they have an opportunity to make representations to either the UARB or the PUB or other Authorized Authority, as the case may be.

4.6 Safety

Each Manager shall operate and manage the Transmission Assets for which it is responsible in a manner that is in compliance with all Applicable Law pertaining to HSE and that is designed to avoid significant, adverse and unintended impacts on the safety or health of people, property or the environment.

4.7 Shared Use of Transmission Corridor

The Facility Real Property Interests in NL and in the seabed of the Cabot Strait shall not be used by Emera for any purpose other than the Maritime Link without Nalcor's prior written

consent, which shall not be unreasonably withheld. If mutually agreed by the Parties, Nalcor or an Affiliate of Nalcor and Emera may enter into a sharing and utilization agreement regarding such Facility Real Property Interests, a term of which would be that any such shared use by Emera must have no adverse impact on the use, operation, maintenance, repair or rehabilitation of the Maritime Link during its Service Life or its decommissioning and removal at the end of its Service Life. **Section 1.2(m)(ii)** applies to this **Section 4.7**.

4.8 Maritime Link Life Extension Projects

- (a) Nalcor Requirements - From time to time during the Term, in conjunction with or in addition to O&M Activities required to be carried out by Emera at its cost pursuant to this Agreement, Nalcor may require Emera to carry out a Maritime Link Life Extension Project in accordance with plans, specifications and project schedules Approved by the JOC. Maritime Link Life Extension Projects required by Nalcor shall be performed or caused to be performed by Emera in accordance with this Agreement as part of the Maritime Link O&M Activities, except that all Maritime Link Life Extension Costs attributable to Maritime Link Life Extension Projects shall be for Nalcor's account and charged in accordance with **Section 5.8**.
- (b) Resolution of Disputes - The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve by arbitration any Dispute as to the design parameters, scheduling or quality of a Maritime Link Life Extension Project or as to the amount of the related Maritime Link Life Extension Costs.

ARTICLE 5 FINANCIAL AND OTHER ARRANGEMENTS

5.1 Initial LTAMP and LTAMP Cost Estimates

- (a) Nalcor Initial LTAMPs - By September 30, 2014, Nalcor shall prepare and submit to Emera a preliminary Long-Term Asset Management Plan ("**Initial LTAMP**") for each of the Muskrat Falls Plant and the NL Transmission Assets, together with corresponding Initial LTAMP Cost Estimates. Within 15 days after receipt of Nalcor's Initial LTAMPs and Initial LTAMP Cost Estimates, Emera shall review them and provide any comments in writing to Nalcor. After receipt of Emera's comments, if any, Nalcor may, in its sole and absolute discretion, make modifications to its Initial LTAMPs and Initial LTAMP Cost Estimates and shall provide final versions to Emera by October 31, 2014.
- (b) Emera Initial LTAMP - By September 30, 2014, Emera shall prepare and submit to Nalcor an Initial LTAMP for the Maritime Link, together with a corresponding Initial LTAMP Cost Estimate. Within 15 days after receipt of Emera's Initial LTAMP and Initial LTAMP Cost Estimate, Nalcor shall review them and provide any comments in writing to Emera. After receipt of Nalcor's comments, if any, Emera may, in its sole and absolute discretion, make modifications to its Initial LTAMP and Initial LTAMP Cost Estimate and shall provide final versions to Nalcor by October 31, 2014.

5.2 In-Service LTAMPs and LTAMP Cost Estimates

- (a) Nalcor In-Service LTAMPs - Not more than 30 days before or 60 days after the date of First Commercial Power, as defined in the NLDA, as regards the last of the Defined Assets to achieve First Commercial Power, as defined in the NLDA, Nalcor shall prepare and submit to Emera an In-Service LTAMP and In-Service LTAMP Cost Estimate for each of the Muskrat Falls Plant and the NL Transmission Assets. Within 90 days after receipt of Nalcor's In-Service LTAMPs and In-Service LTAMP Cost Estimates, Emera shall give Notice to Nalcor of the particulars of any disagreement Emera may have with the Nalcor In-Service LTAMPs or In-Service LTAMP Cost Estimates. If Emera gives such Notice and the Parties are unable to resolve any disagreement within 30 days thereafter, or such extended period as may be agreed in writing by the Parties, the matter will constitute a Dispute and shall be submitted by the Parties for resolution pursuant to the Dispute Resolution Procedure. The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve any such Dispute by arbitration.
- (b) Emera In-Service LTAMPs - Not more than 30 days before or 60 days after the date of First Commercial Power, as defined in the NLDA, as regards the last of the Defined Assets to achieve First Commercial Power, as defined in the NLDA, Emera shall prepare and submit to Nalcor an In-Service LTAMP and In-Service LTAMP Cost Estimate for the Maritime Link. Within 90 days after receipt of Emera's In-Service LTAMP and In-Service LTAMP Cost Estimate, Nalcor shall give Notice to Emera of the particulars of any disagreement Nalcor may have with the Emera In-Service LTAMP or In-Service LTAMP Cost Estimate. If Nalcor gives such Notice and the Parties are unable to resolve any disagreement within 30 days thereafter, or such extended period as may be agreed in writing by the Parties, the matter will constitute a Dispute and shall be submitted by the Parties for resolution pursuant to the Dispute Resolution Procedure. The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve any such Dispute by arbitration.
- (c) Consolidation of Disputes - If there are concurrent Disputes as to any of Nalcor's In-Service LTAMPs pursuant to **Section 5.2(a)** and Emera's In-Service LTAMP pursuant to **Section 5.2(b)**, or if concurrently with any such Dispute there is a Dispute under **Section 5.5(c)**, the resolution of all such Disputes shall be consolidated pursuant to the Dispute Resolution Procedure.

5.3 No Role of JDC-ML

For greater certainty, the Parties agree that the joint development committee established pursuant to the ML-JDA will have no role in the approval of the Initial LTAMPs, the Initial LTAMP Cost Estimates, the In-Service LTAMPs or the In-Service LTAMP Cost Estimates.

5.4 Financial Principles

In preparing the Initial LTAMP Cost Estimates and the In-Service LTAMP Cost Estimates, the Parties shall adhere to and assist each other in adhering to the following principles:

- (a) the Parties shall develop and agree upon a common cost estimating methodology for preparing the Initial LTAMP Cost Estimates and the In-Service LTAMP Cost Estimates, using the costing information available at the relevant time. **Section 1.2(m)(i)** applies to this **Section 5.4(a)**;
- (b) the common cost estimating methodology will produce, by year, estimates for the Initial LTAMP Cost Estimates and the In-Service LTAMP Cost Estimates, as applicable, in nominal dollars, adhering to the following principles:
 - (i) the base cost estimate will be prepared in constant dollars (i.e. if prepared in 2012, use 2012 dollars), inclusive of all owner's costs, cost contingency, and other costs as appropriate; and
 - (ii) the base cost estimate will use common cost categories as appropriate and will be broken out by relevant cost categories to allow for the application of applicable producer price indices or cost escalators to derive the nominal dollar expenditures by year; and
- (c) in addition to any other Taxes included in Operating and Maintenance Costs, the Initial LTAMP Cost Estimates and the In-Service LTAMP Cost Estimates shall include any federal Taxes, including carbon taxes, imposed with respect to the Defined Assets or the Nova Scotia Block which are enacted or, as of the date of either such cost estimate, reasonably anticipated to be enacted, and which will apply during the Term. For greater certainty, the following Taxes shall not be included in Operating and Maintenance Costs:
 - (i) Taxes imposed pursuant to the Income Tax Act other than carbon taxes;
 - (ii) Taxes imposed pursuant to the *Income Tax Act* (Nova Scotia) or the *Income Tax Act* (Newfoundland and Labrador); and
 - (iii) Taxes to the extent that they are refundable, rebateable or otherwise recoverable.

5.5 Adjustments Regarding Operating and Maintenance Costs

- (a) Definitions - In this **Section 5.5**:

"DA O&M Amount" means, for each Operating Year, the total estimated Operating and Maintenance Costs for the Defined Assets as set out in the In-Service LTAMP Cost Estimates for the Defined Assets;

"Emera Payment Amount" means, for each Operating Year, the amount, if any, by which the ML O&M Amount is less than 20 percent of the DA O&M Amount;

“ML O&M Amount” means, for each Operating Year, the total estimated Operating and Maintenance Costs for the Maritime Link as set out in the In-Service LTAMP Cost Estimate for the Maritime Link;

“Nalcor Payment Amount” means, for each Operating Year, the amount, if any, by which the ML O&M Amount exceeds 20 percent of the DA O&M Amount;

“Present Worth of the Nalcor Payment Amounts” means the sum of the present worths as of the Commercial Operation Date of the Maritime Link of each of the Nalcor Payment Amounts, calculated using a discount rate equal to the ML Cost of Capital Rate; and

“Present Worth of the Emera Payment Amounts” means the sum of the present worths as of the Commercial Operation Date of the Maritime Link of each of the Emera Payment Amounts, calculated using a discount rate equal to the ML Cost of Capital Rate.

- (b) Payment of Adjustment - Within 30 days after the In-Service LTAMP Cost Estimates have been finalized pursuant to **Section 5.2**, the Parties shall calculate the Present Worth of the Nalcor Payment Amounts and the Present Worth of the Emera Payment Amounts and:
- (i) if the Present Worth of the Nalcor Payment Amounts exceeds the Present Worth of the Emera Payment Amounts, Nalcor shall pay the amount of the difference to Emera; or
 - (ii) if the Present Worth of the Emera Payment Amounts exceeds the Present Worth of the Nalcor Payment Amounts, Emera shall pay the amount of the difference to Nalcor.

The Party liable shall make payment within 30 days after determination of the amount due pursuant to this **Section 5.5(b)**.

- (c) Design Changes - If, as a result of any material change in the basis of design of the MFP, the LTA or the LIL made by Nalcor after the Sanction of such Defined Asset, the DA O&M Amount for any Operating Year is greater than the total of the estimated Operating and Maintenance Costs for the Defined Assets for that Operating Year as set out in the Initial LTAMP Cost Estimates, the amount of such excess shall be excluded from the DA O&M Amount for the purposes of the calculation of the Emera Payment Amount and the Nalcor Payment Amount for that Operating Year. Any disagreement between the Parties as to the application of this **Section 5.5(c)** shall be submitted by the Parties for resolution as a Specified Dispute.
- (d) Responsibility for O&M Costs - After any payments required pursuant to this **Section 5.5** have been made, neither Party will have any responsibility or liability for

Operating and Maintenance Costs incurred by the other Party, except as otherwise expressly provided in this Agreement.

5.6 CEO Override Costs

If a determination is made pursuant to Section 3.2(f) of the ML-JDA that Nalcor is liable to Emera for Unrecovered Additional O&M Costs that are not quantifiable at the time of such determination, the following provisions will apply:

- (a) Identification of O&M Activities - Emera shall separately identify in its Annual Maintenance Plan for each Operating Year any O&M Activities to be carried out in that Operating Year that will give rise to Unrecovered Additional O&M Costs;
- (b) Cost Estimate - When Emera provides an Annual Maintenance Plan referred to in **Section 5.6(a)** to the JOC for an Operating Year, Emera shall provide to Nalcor an estimate of the Unrecovered Additional O&M Costs Emera expects to incur during that Operating Year, together with reasonable details of the related O&M Activities;
- (c) Dispute by Nalcor - If Nalcor disputes its liability pursuant to the applicable determination made pursuant to Section 3.2(f) of the ML-JDA for all or any portion of the Unrecovered Additional O&M Costs claimed by Emera pursuant to **Section 5.6(b)**, it shall give Notice thereof to Emera within 30 days after Nalcor's receipt of Emera's cost estimate pursuant to **Section 5.6(b)**. If Nalcor gives such Notice and the Parties are unable to resolve any disagreement within 30 days thereafter, or such extended period as may be agreed in writing by the Parties, the matter shall be submitted by the Parties for resolution pursuant to the Dispute Resolution Procedure.
- (d) Review by Nalcor - Before making commitments to carry out O&M Activities that will result in Emera incurring Unrecovered Additional O&M Costs, Emera shall permit Nalcor to review and comment on Emera's plans and cost estimates for such O&M Activities and, acting reasonably, shall take into consideration any recommendations Nalcor may provide to avoid or minimize the amount of such Unrecovered Additional O&M Costs;
- (e) Invoicing - As and when Emera incurs Unrecovered Additional O&M Costs that are for Nalcor's account pursuant to this **Section 5.6**, Emera shall invoice Nalcor for such Unrecovered Additional O&M Costs in accordance with **Section 5.8**; and
- (f) Work Performed by Nalcor - At Nalcor's request, and when commercially reasonable having regard to Emera's obligations under this Agreement, Emera shall permit Nalcor or an Affiliate of Nalcor to perform work at Nalcor's expense that would otherwise be for Nalcor's account pursuant to this **Section 5.6**, subject to reasonable terms and conditions governing the performance of such work, as mutually agreed by the Parties. **Section 1.2(m)(i)** applies to the foregoing sentence. The reasonable terms and conditions governing the performance of the work completed by Nalcor shall include warranties and indemnities from Nalcor in favour of Emera for any

Claims arising from Nalcor's performance of work pursuant to this **Section 5.6(f)**, consistent with those normally obtained by Emera from third party contractors performing similar work for Emera. Nalcor shall release Emera from liability for the breach of any of Emera's obligations under any of the other Formal Agreements to the extent that such a breach arises as a result of Nalcor's performance of the work pursuant to this **Section 5.6(f)**.

5.7 Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 5.7(c)**:
 - (i) Emera shall pay or cause to be paid all Taxes on or with respect to the Maritime Link which accrue or are payable on or after the A&R Effective Date and on or before the Transfer Date;
 - (ii) Nalcor shall pay or cause to be paid all Taxes on or with respect to the Maritime Link which are both accrued and payable after the Transfer Date;
 - (iii) notwithstanding **Sections 5.7(b)(i)** and **5.7(b)(ii)**, to the extent so provided in the other Formal Agreements, Nalcor or Emera, as applicable, shall pay or caused to be paid all Taxes imposed by any Authorized Authority on or with respect to transmission supplies, Tariff Charges or Energy and Capacity transmitted on the Maritime Link pursuant to such other Formal Agreements;
 - (iv) for greater certainty, except as provided in the Formal Agreements, Emera shall not be obligated to pay any Taxes in respect of the MFP, the LTA or the LIL;
 - (v) if Nalcor is required by Applicable Law to remit or pay Taxes which are Emera's responsibility hereunder, Nalcor shall first offset the amount of Taxes so recoverable from other amounts owing by it to Emera under this Agreement, and Emera shall promptly reimburse Nalcor for such Taxes to the extent not so offset;
 - (vi) if Emera is required by Applicable Law to remit or pay Taxes which are Nalcor's responsibility hereunder, Emera shall first offset the amount of Taxes so recoverable from other amounts owing by it to Nalcor under this Agreement, and Nalcor shall promptly reimburse Emera for such Taxes to the extent not so offset; and
 - (vii) nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.

(c) HST - Notwithstanding **Sections 5.7(a)** and **5.7(b)**, the Parties acknowledge and agree that:

- (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;
- (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to the other Party, such amount shall first be increased by the percentage determined for “B” in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
- (iii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other Party such documentation required pursuant to **Section 5.7(h)**; and
- (iv) if one Party incurs an expense as agent for the other Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.

(d) Changes in Taxes - Subject to **Sections 5.7(b)**, **5.7(c)**, **5.7(e)** and **5.7(f)**, New Taxes payable in respect of the Maritime Link shall be payable as follows:

- (i) any New Tax imposed or charged pursuant to the Income Tax Act, *Income Tax Act* (Newfoundland and Labrador) (including the imposition of such tax pursuant to the *Canada-Newfoundland Atlantic Accord Implementation Act* (Canada)), *Income Tax Act* (Nova Scotia) (including the imposition of such tax pursuant to the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act* (Canada)), or Part IX of the Excise Tax Act shall be paid by the Party on whom such New Tax is imposed or charged by such laws; and
- (ii) any other New Tax imposed or charged in respect of the Maritime Link shall be paid by Emera.

For greater certainty,

- (iii) Emera and its Affiliates are solely responsible for the payment of income taxes and HST payable by Emera and its Affiliates, as the case may be; and

- (iv) Nalcor and its Affiliates are solely responsible for the payment of income taxes and HST payable by Nalcor and its Affiliates, as the case may be.
- (e) NL Property/Local Taxes - Notwithstanding **Section 5.7(a)** but subject to **Section 5.7(b)**, Emera shall pay all of the following Taxes as and when payable pursuant to Applicable Law:
 - (i) all real property taxes (including any civic or local improvement assessments) exigible in respect of real property located in NL and forming part of, or used for, the Maritime Link;
 - (ii) any requisite grants in lieu of real property taxes in respect of real property located in NL and forming part of, or used for, the Maritime Link, whether payable by Emera or by one of its Affiliates;
 - (iii) all applicable land transfer taxes, registration fees and similar taxes and fees payable in respect of transfers of interests in real property located in NL or for the registration of deeds for the conveyance of real property (or for the registration of any other form of indenture creating a real property right or interest, or notice thereof), for real property located in NL and forming part of, or used for, the Maritime Link; and
 - (iv) any other Tax imposed on Emera or its property or business under Applicable Law in NL, including any such Tax which is for the benefit of a municipality, municipal area, school board or local school.
- (f) NS Property/Local Taxes - Notwithstanding **Section 5.7(a)** but subject to **Section 5.7(b)**, Emera shall pay all of the following Taxes as and when payable pursuant to Applicable Law:
 - (i) all real property taxes (including any civic or local improvement assessments) as exigible in respect of real property located in NS and forming part of, or used for, the Maritime Link;
 - (ii) any requisite grants in lieu of real property taxes in respect of real property located in NS and forming part of, or used for, the Maritime Link, whether payable by Emera or by one of its Affiliates;
 - (iii) all applicable land or deed transfer taxes, registration fees and similar taxes and fees payable in respect of transfers of interests in real property located in NS or for the registration of deeds for the conveyance of real property (or for the registration of any other form of indenture creating a real property right or interest, or notice thereof), for real property located in NS and forming part of, or used for, the Maritime Link; and

- (iv) any other Tax imposed on Emera or its property or business under Applicable Law in NS, including any such Tax which is for the benefit of a municipality, municipal area, school board or local school.

(g) Determination of Value for Tax Compliance Purposes

- (i) Subject to the right of final determination as provided under **Section 5.7(g)(ii)** the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (ii) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

(h) Invoicing - All invoices, as applicable, issued pursuant to **Section 5.8** shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (i) the HST registration number of the supplier;
- (ii) the subtotal of all HST taxable supplies;
- (iii) the applicable HST rates and the amount of HST charged on such HST taxable supplies; and
- (iv) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

(i) Payment and Offset

- (i) Subject to **Section 5.7(i)(ii)**, Taxes collectable by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (ii) A Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

- (j) HST Registration Status and Residency
- (i) Nalcor represents and warrants that it is registered for purposes of the HST and that its registration number is 837364611, and undertakes to advise Emera of any change in its HST registration status or number.
 - (ii) Emera represents and warrants that it is registered for purposes of the HST and that its registration number is 868143132, and undertakes to advise Nalcor of any change in its HST registration status or number.
 - (iii) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Emera of any change in its residency status.
 - (iv) Emera represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Nalcor of any change in its residency status.
- (k) Cooperation to Minimize Taxes - Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Law, so long as neither Party is materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Law in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).
- (l) Additional Tax Disclosure - Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide to the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:
- (i) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
 - (ii) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and
 - (iii) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise

pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

In addition to the notification required under this **Section 5.7(l)**, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Sections 5.7(l)(i)** through **5.7(l)(iii)**.

- (m) Prohibited Tax Disclosure - Except as required by Applicable Law, notwithstanding any other provision of this Agreement, each Party shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of the other Party to an Authorized Authority without the prior written consent of such other Party.
- (n) Withholding Tax - If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Law, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, the Party shall deliver to the other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of the other Party.
- (o) Tax Indemnity - Each Party (in this **Section 5.7(o)** referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Section 5.7** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 5.7(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:
 - (i) any and all Taxes imposed by any Authorized Authority on the other Party in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein; and
 - (ii) any and all Taxes imposed by any Authorized Authority in respect of the supplies contemplated by this Agreement, and any and all Claims (including

Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein.

- (p) Additional Tax Indemnity - If one Party (in this **Section 5.7(p)** referred to as the “**First Party**”) is, at any time, a non-resident of Canada for the purposes of the Income Tax Act or the Applicable Law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this **Section 5.7(p)** referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:
- (i) any such amount payable by the other Party pursuant to this **Section 5.7(p)** shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
 - (ii) for greater certainty, this **Section 5.7(p)** shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.
- (q) Assignment - Tax Requirements - Notwithstanding any other provision in this Agreement, except as otherwise agreed to by the Parties in writing, a Party shall not assign any of its interest in this Agreement to another Person unless:
- (i) the Person is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such Assignment;
 - (ii) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Person; and
 - (iii) the Person agrees, in writing, to comply with the provisions of this **Section 5.7**.

5.8 Invoicing and Payment

- (a) Invoices - Unless otherwise provided in this Agreement with respect to specific payments, the calendar month is the standard period for invoicing amounts payable by a Party (the “**Payor**”) to the other Party (the “**Payee**”) hereunder. On or before

the 15th day of each calendar month, the Payee shall provide an invoice to the Payor for all amounts in respect of the preceding month chargeable by the Payee to the Payor and, subject to **Section 5.8(h)**, any amounts not previously invoiced to the Payor. The Payee shall provide with the invoice such supporting documents and information as the Payor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced (the “**Supporting Material**”).

- (b) Disputed Amounts - Within 30 days after receipt of an invoice from the Payee, the Payor shall report in writing to the Payee any disputed amounts in the invoice, specifying the reasons therefor.
- (c) Time and Method of Payment - Within 30 days after its receipt of a properly prepared invoice, accompanied by acceptable Supporting Material, the Payor shall pay to the Payee the amount stated on the invoice less any amounts disputed pursuant to **Section 5.8(b)** and any withholding required by Applicable Law. The Payor shall make payment by electronic funds transfer or other mutually agreed method to an account designated by the Payee.
- (d) Effect of Payment - Notwithstanding **Section 5.8(b)**, payment of an invoice will not prejudice the right of the Payor to dispute the correctness of the invoice for a period of up to two years after the end of the calendar year in which the Payor received the invoice. Failure by the Payor to dispute charges will not be deemed to be acceptance of the charges or preclude the Payor from subsequently disputing an amount or conducting an audit of the charges within two years after the end of the calendar year in which the Payor received the invoice. Any charges not disputed in writing by the Payor within two years after the end of the calendar year in which the Payor received the invoice for such charges will conclusively be presumed to be true and correct.
- (e) Resolution of Objections - The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after the Payee’s receipt of a notification of disputed amounts pursuant to **Section 5.8(b)**. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, the Payor shall pay any amount determined to be owing to the Payee within five Business Days after the Payor receives an invoice from the Payee for such amount.
- (f) Overpayments - Within 15 Business Days after a Payee’s discovery or receipt of written evidence of an overpayment, the Payee shall refund the overpayment to the Payor.
- (g) Interest on Overdue Amounts - Any amount not paid by either Party when due, including any charge disputed by the Payor pursuant to **Section 5.8(b)** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 5.8(c)**, and any refund of an

overpayment pursuant to **Section 5.8(f)**, will bear interest at the Prime Rate plus three percent per annum, calculated daily not in advance, from the date upon which the payment became due to and including the date of payment, and interest accrued will be payable on demand.

- (h) Waiver of Unbilled Charges - If a Payee entitled to payment in respect of an amount paid by the Payee to a third party fails to invoice the Payor pursuant to this **Section 5.8** for such amount within six months after the date the Payee made payment to the third party, the right to such payment by the Payor is waived. Notwithstanding the foregoing, a Party may recover Taxes pursuant to a statutory right to recover such Taxes, including the right to recover HST pursuant to Section 224 of the Excise Tax Act.

5.9 Not Create Encumbrances

Emera shall keep the Maritime Link free and clear of any and all Encumbrances other than Permitted Encumbrances which may arise (i) under paragraphs **(e)**, **(f)** and **(g)** of the definition of Permitted Encumbrances, or (ii) from O&M Activities which are its responsibility. Upon becoming aware of the application or threatened application of any such Encumbrances, Emera shall promptly notify Nalcor providing reasonable particulars, and shall forthwith discharge any such Encumbrance.

ARTICLE 6 INFORMATION, ACCESS AND REPORTING

6.1 Records and Audits

Each Manager shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Term, including major maintenance records, life cycle management records and design and Commissioning records, shall be maintained for the Term; all other documents shall be retained for at least seven years after the year in which they were created. For greater certainty, and without limiting **Section 1.2(d)**, Nalcor shall not be required to maintain financial records in accordance with US GAAP and Emera shall not be required to maintain financial records in accordance with Canadian GAAP. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Party to comply with its obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for in the Project NDA. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

6.2 Access and Information

Each Party shall have the right, from the Effective Date through to the end of the Term, upon reasonable advance Notice to the other Party, to access the Transmission Assets and the sites thereof at all reasonable times for the sole purpose of examining the Transmission Assets or the conduct of the O&M Activities in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the Transmission Assets and shall not compromise the safety of persons or property. While accessing the Transmission Assets, all Representatives of the Parties shall follow all rules and procedures established by the Manager of such Transmission Assets for visitors to the site which are related, but not limited, to safety and security. The inspection of the Transmission Assets or the exercise of any audit rights or the failure to inspect the Transmission Assets or to exercise audit rights by or on behalf of a Party shall not relieve the other Party of any of its obligations under this Agreement. No Emera Default or Nalcor Default will be waived or deemed to have been waived solely by any inspection by or on behalf of the other Party. Subject to **Section 7.2**, in no event will any inspection by a Party hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law.

6.3 Restriction

In no circumstances shall either Party permit its Marketing Personnel to have access to any of the other Party's information or facilities referred to in **Section 6.1** or **6.2** without the prior written consent of the affected Party; provided however that this restriction does not apply to publicly available information.

6.4 Reporting Obligations

- (a) O&M Activities - Within 90 days after the end of each Operating Year, each Manager, in respect of the Transmission Assets for which it is responsible, shall provide the JOC with a report with respect to that Manager's O&M Activities during each such period, in such form as may be required by the JOC. The report shall include a summary of operations, including information in reasonable detail concerning:
 - (i) the Transmission Asset's Energy and Capacity transferred and availability during such period;
 - (ii) O&M Activities during such period;
 - (iii) variances from the Annual Maintenance Plan;
 - (iv) capital projects and progress against schedule of capital related activities during such period; and
 - (v) any material developments during such period in the operation of the Transmission Assets, including material technical problems, discovery of any

material defects in the physical plant and equipment of the Transmission Assets, environmental issues, material interruptions to operation of the Transmission Assets, and material disputes with any Authorized Authority (including Tax authorities) or material labour difficulties related to the Transmission Assets.

- (b) Communications with Authorized Authorities - Each Manager, with respect to the Transmission Assets for which the Manager is responsible, shall, upon request by either Party, provide the other Party with copies of all communications and correspondence to any and all Authorized Authorities. Notwithstanding the foregoing, subject to the Parties' rights with respect to Financial Matters, the Manager shall be responsible for communications and correspondence to any and all Authorized Authorities with respect to the Transmission Assets for which the Manager is responsible.
- (c) Reliability Incident Reports - Promptly following the occurrence of a Reliability Incident affecting a Transmission Asset, the Manager of that Transmission Asset shall provide a written report to the JOC explaining the nature of the problem, the expected duration of any interruption of service, details of any failed equipment, and such other information as the JOC may reasonably require. When the problem that caused the Reliability Incident has been corrected, the applicable Manager shall provide the JOC with a further written report describing the measures taken to correct the problem and prevent its recurrence.

ARTICLE 7

REQUIRED CONDITION AND TRANSFER OF MARITIME LINK AT END OF TERM

7.1 Emera Obligation to Transfer at End of Term

- (a) Transfer to Nalcor - On or as soon as reasonably possible after the Expiry Date, Nalcor shall acquire and purchase from Emera and Emera shall, or shall cause its Affiliates to, sell and transfer to Nalcor ownership of the Maritime Link for a purchase price of \$1.00. At the time of the closing of the transaction pursuant to this **Section 7.1** (the "**Transfer Closing**"). Emera shall or shall cause its Affiliates to convey, to Nalcor all of Emera's right, title and interest in and to:
 - (i) the Maritime Link, including all Facility Real Property Interests; and
 - (ii) the Maritime Link (Nalcor) Transmission Service Agreement,
 free of all Encumbrances.
- (b) Interests Held in Trust - Without limiting **Section 7.2** or any obligation of Emera under this Agreement, if any assignment, transfer or delivery to Nalcor of any asset, right or entitlement required pursuant to this **Section 7.1** cannot be completed prior to or at the time of the Transfer Closing:

- (i) Emera shall make commercially reasonable efforts to complete such assignment, transfer or delivery as soon as possible after the Transfer Closing; and
 - (ii) pending the effective completion of such assignment, transfer or delivery, Emera shall hold such asset, right or entitlement in trust for the exclusive benefit of Nalcor.
- (c) Closing Documents - Emera shall execute and deliver at the Transfer Closing any and all such documentation and instruments as may be necessary or appropriate to effect the transfer of the Maritime Link pursuant to this **Section 7.1**.
- (d) Regulatory Approvals - Each Party shall use commercially reasonable efforts to obtain and to assist the other Party in obtaining, in a timely manner and so as not to delay or prevent the Transfer Closing, all Regulatory Approvals required in connection with the transfer of the Maritime Link to Nalcor pursuant to this **Section 7.1**.
- (e) Transfer Closing - The Transfer Closing shall take place at a mutually agreed location in Halifax, Nova Scotia, on the date that is the latest to occur of:
 - (i) the Expiry Date; or
 - (ii) on the fifth Business Day following receipt of all Regulatory Approvals necessary to effect the transfer of the Maritime Link to Nalcor pursuant to this **Section 7.1**.
- (f) Transfer of Responsibility - Emera shall remain solely responsible for the performance of all O&M Activities and payment of all ML O&M Costs in respect of the period up to and including the Transfer Date. Nalcor shall assume sole responsibility for O&M Activities and for all ML O&M Costs incurred in respect of the period after the Transfer Date. If the Transfer Closing occurs after the Expiry Date, the Parties shall make such adjustments on the Transfer Closing as may be appropriate to allocate ML O&M Costs in respect of the period after the Expiry Date in accordance with this **Section 7.1(f)**.
- (g) Release and Indemnity by Nalcor - Subject to any liabilities of Emera pursuant to **Section 7.2**, Nalcor shall be responsible for, and shall hold harmless, protect, release, defend and indemnify the Emera Group from all ML O&M Costs, liabilities, obligations, costs and expenses that are incurred or accrued after the Transfer Date as a result of any O&M Activities on or Operation and Maintenance Costs of the Maritime Link, or other activities on or relating to any of the Maritime Link, the ML Project or any Maritime Link Site.

7.2 Emera Liability after Transfer Date

Prior to the Transfer Date Nalcor shall be granted unlimited access to the Maritime Link for the purposes of audit and inspection. Emera shall not be liable for any undiscovered issues after the Transfer Date, irrespective of when the issue arose. After the Transfer Date, Emera's liability with respect to the ML O&M Costs will be limited to:

- (a) any ML O&M Costs that were incurred but not paid for prior to the Transfer Date; and
- (b) any ML O&M Costs that are necessary to ensure that the Maritime Link is in the Required Condition at the Transfer Date, provided that Nalcor has given Notice to Emera of such ML O&M Costs prior to the Transfer Date and:
 - (i) Emera has agreed in writing that the ML O&M Costs are necessary to ensure that the Maritime Link is in the Required Condition at the Transfer Date; or
 - (ii) if there is a Dispute as to whether the ML O&M Costs are necessary to ensure that the Maritime Link is in the Required Condition at the Transfer Date, such Dispute has been resolved pursuant to the Dispute Resolution Procedure and it is determined that such ML O&M Costs are necessary.

7.3 Performance of Work

- (a) Nalcor Right to Carry out Work - Subject to **Section 7.3(b)**, without limiting any other right or remedy Nalcor may have, Nalcor may perform or cause to be performed any or all work after the Transfer Date, and provided that Emera is liable for such work pursuant to **Section 7.2** Emera shall reimburse to Nalcor from time to time upon receipt of Nalcor's invoices and reasonable supporting documentation, all costs, including labour, material and overhead reasonably incurred by Nalcor to complete such remaining work plus a reasonable profit, plus a further mark-up of 20% of such costs.
- (b) Performance of Work by Emera - Prior to performing any work pursuant to **Section 7.3(a)**, Nalcor shall give Notice to Emera of the work required and Emera may, within 10 Business Days following receipt of such Notice, elect by Notice to Nalcor to perform, or to cause its Affiliates to perform, the work specified in Nalcor's Notice, at Emera's sole cost and expense, specifying the means by which and the time within which Emera shall perform the work or cause it to be performed. Emera shall proceed to carry out the work (i) in accordance with Emera's proposal, (ii) in a good and workmanlike and timely manner, and (iii) in accordance with Good Utility Practice. In performing such work, Emera shall not unreasonably interfere with Nalcor's operations relating to the Maritime Link and shall not compromise the safety of persons or property. While accessing the Maritime Link, all representatives of Emera shall follow all rules and procedures established by Nalcor for contractors working on the site, including those related to safety and security.

7.4 Transition to Nalcor of O&M Activities

- (a) Access to Emera Personnel - Commencing at least one year prior to the end of the Term, Emera shall provide Representatives of Nalcor with access to and the assistance of such knowledgeable personnel of Emera as Nalcor may deem necessary in order to allow Nalcor to familiarize itself with all Maritime Link O&M Activities.
- (b) Delivery Protocol - At the request of Nalcor, Emera shall enter into a delivery protocol not later than six months prior to the end of the Term, or such shorter period as may be appropriate in the circumstances, for the purpose of setting out the procedure to be followed and matters to be attended to in conjunction with the delivery of the Maritime Link to Nalcor at the end of the Term, which agreement shall be on mutually agreed terms and conditions. If either Party is unable to agree upon such terms and conditions, that Party may refer the matters in dispute for resolution as a Specified Dispute. **Section 1.2(m)(i)** applies to this **Section 7.4(b)**.
- (c) O&M Contracts - Not later than six months prior to the end of the Term, Emera shall:
 - (i) deliver to Nalcor copies of all O&M Contracts, together with a statement of:
 - (A) the items ordered and not yet delivered pursuant to each agreement;
 - (B) the expected delivery dates of all such items; and
 - (C) the total cost of each agreement and the terms of payment;
 - (ii) submit to Nalcor detailed information relating to each O&M Contractor or otherwise relating to the O&M Activities in sufficient detail so that Nalcor may contact each such O&M Contractor and determine the role or function of each such O&M Contractor in regard to the O&M Activities; and Nalcor, if it so elects, may seek to engage each O&M Contractor on substantially the same terms as those upon which each had been contracted by Emera;
 - (iii) deliver to Nalcor a list of:
 - (A) all items specially designed for the Maritime Link previously delivered or fabricated by Emera or any O&M Contractor and intended to be but not yet incorporated in the Maritime Link ("**Special Items**"); and
 - (B) all other supplies, materials, machinery, equipment and special tools specifically designed for use in the operation or maintenance of the Maritime Link; and

- (iv) advise Nalcor of any special circumstances which might limit or prohibit cancellation of any O&M Contract.
- (d) Obligations at End of Term - Immediately upon the expiration or other termination of the Term, Emera shall, as an obligation under this Agreement which survives the Term, and for no consideration, do or cause to be done the following:
- (i) transfer and deliver to Nalcor all ML Data, including the Operation and Maintenance Manuals;
 - (ii) transfer and deliver to Nalcor all or any, as determined by Nalcor, of the existing materials and supplies utilized by Emera in the operation and maintenance of the Maritime Link;
 - (iii) promptly remove from the Maritime Link Sites all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by Emera which are not to be transferred to Nalcor, and repair any damage caused by such removal;
 - (iv) promptly remove all employees of Emera and any O&M Contractors, other than those whose O&M Contracts have been assigned to Nalcor, and vacate the Maritime Link Sites, subject to **Section 7.4(e)**, provided that all employees of Emera who customarily spend substantially all of their working time engaged in O&M Activities shall be permitted by Emera to take employment with Nalcor;
 - (v) surrender possession, control and operation of the Maritime Link and all facilities, appurtenances and fixtures contained or attached to the Maritime Link Sites and deliver to Nalcor, the Maritime Link and all facilities, appurtenances and fixtures contained in or attached to the Maritime Link Sites free and clear of all Encumbrances;
 - (vi) at Nalcor's option, in its sole and absolute discretion, assign to Nalcor or as directed by Nalcor all of Emera's right, title and interest in and to any O&M Contract, whether such O&M Contract is cancelled or not;
 - (vii) as directed by Nalcor, transfer to Nalcor by appropriate instruments of title, and deliver to such place as Nalcor may specify, all Special Items;
 - (viii) furnish to Nalcor all information used in the preparation of reports and other data necessary for Nalcor to operate the Maritime Link, and use commercially reasonable efforts to obtain the consent of any third party required to fulfill such obligation;
 - (ix) notify Nalcor in writing of any Legal Proceedings against Emera by any O&M Contractor relating to the termination of the O&M Activities or any O&M Contract;

- (x) use commercially reasonable efforts to have all licences and permits relating to the Maritime Link or the O&M Activities, to the extent transferable, transferred to Nalcor, and to the extent non-transferable, to assist in having such licences and permits issued to Nalcor so that Nalcor shall be in a position to operate the Maritime Link without interruption;
 - (xi) assist Nalcor in such other manner as Nalcor may require to ensure the orderly transition of control and operation of the Maritime Link; and
 - (xii) take such other commercially reasonable actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters.
- (e) Technical Assistance - Emera shall provide, and shall use commercially reasonable efforts to cause its O&M Contractors to provide, technical advice and support to Nalcor. Such advice and support shall be for a period of six months prior to the transfer of the Maritime Link to Nalcor pursuant to **Section 7.1** and shall include providing any plans, drawings, renderings, blueprints, operating and training manuals for all facilities, personnel information, specifications or other information useful or necessary for Nalcor. In addition, to the extent requested by Nalcor, Emera shall use commercially reasonable efforts to retain any or all key operating and management employees and make them available following termination or expiration of this Agreement to provide on-site, real-time consulting advice to Nalcor.

7.5 Transfer on Early Termination

If this Agreement terminates prior to the Expiry Date in circumstances where ownership of the Maritime Link is transferred to Nalcor pursuant to another Formal Agreement, the provisions of this **Article 7** shall apply, *mutatis mutandis*, in respect of such transfer.

ARTICLE 8 FORCE MAJEURE

8.1 Force Majeure

If by reason of an event of Force Majeure a Party is not reasonably able to fulfil an obligation, other than an obligation to pay or spend money, in accordance with the terms of this Agreement, then such Party shall:

- (a) forthwith Notify the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
- (b) be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;

- (c) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;
- (d) as soon as reasonably possible after such Force Majeure, fulfil or resume fulfilling its obligations hereunder;
- (e) provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and
- (f) not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.

ARTICLE 9 INSURANCE

9.1 Insurance Program

Each Manager, with respect to the Transmission Assets for which it is responsible, shall, as it deems necessary, acting reasonably, keep in place or cause to be placed for the duration of this Agreement such operational, property and liability insurances as are normally necessary for a facility of similar size and design, including All Risk Property Insurance and Third Party Liability Insurance, as well as such other coverages as may be deemed appropriate in the opinion of the Manager, acting reasonably, giving due consideration to the inherent risks involved in the operation of the Transmission Assets and the factors mentioned in **Section 9.2**.

9.2 Coverages, Limits, Deductibles and Exclusions

In each case, the insurance shall provide for coverages, limits, deductions and exclusions and other terms and conditions as may be appropriate for the operation of the Transmission Assets, giving due consideration to:

- (a) the values at risk and the maximum loss exposures reasonably anticipated at the time the insurance coverage is placed;
- (b) exposures to third party liabilities;
- (c) commercial availability and commercially reasonable cost of such coverage;
- (d) the reasonable practices employed by similar entities and similar projects in Canada; and
- (e) each Party's financial ability and desire to retain or self-insure certain risks.

9.3 Liability and Property Coverage

- (a) Each Manager shall keep in place or maintain in place Third Party Liability Insurance to cover legal liabilities for bodily injury and property damage arising out of the performance of its obligations under this Agreement and/or arising out of the Transmission Assets for which it is responsible.
- (b) Each Manager shall procure its own property insurance as it deems appropriate in respect of the Transmission Assets for which it is responsible.

9.4 Other Requirements

All insurance procured by the Manager pursuant to this **Article 9** shall, as applicable:

- (a) name the other Party, its Affiliates as appropriate, and their respective directors, officers and employees as additional insureds;
- (b) be at the Manager's expense and be primary, non-contributing with, and not in excess of, any other insurance available to the other Party;
- (c) provide for 30 days notice to the other Party in the event of cancellation or material change that reduces or restricts the insurance, provided that if insurers shall provide notice earlier than 30 days, the Party receiving such notice shall immediately Notify the other Party of same;
- (d) remain in full force and effect at all times during the Term; and
- (e) include a waiver of subrogation in favour of the other Party, its Affiliates as appropriate, and their respective directors, officers and employees.

9.5 Lender Requirements

Each Party shall cooperate fully with the other Party and shall assist the other Party in complying with obligations imposed by lenders relating to insurance coverage provided pursuant to this **Article 9**.

9.6 Evidence of Insurance

If requested by a Party, the procuring Party shall provide satisfactory evidence of insurance in the form of a certificate of insurance when obtained and thereafter annually upon renewal of such insurance.

9.7 Placement of Required Insurance

If a Manager fails to obtain or maintain any insurance required to be maintained by it hereunder, the other Party may place insurance on its behalf and all costs thereof or in relation thereto shall be for the sole account of the Manager that failed to obtain the insurance.

9.8 Effect of Failure to Insure

Notwithstanding **Section 9.7**, none of the obligations of the Parties in this Agreement shall be reduced, or in any way affected, or diminished in any respect, by a failure of either Party to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by a denial of coverage of any insurance, nor shall either Party be entitled to any indemnity or contribution as a result of any such failure to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by any denial of coverage of any insurance.

9.9 Site Visits

The Manager will provide to the other Party evidence of liability and automobile insurance in anticipation of any visits to the site of any Transmission Assets managed by the Manager pursuant to this Agreement.

9.10 Corporate Policies

It is understood and agreed that the Manager may provide the coverage referenced in this Agreement through policies covering other assets and/or operations operated by the Manager.

ARTICLE 10 TERM AND TERMINATION

10.1 Term

The term of this Agreement (the “**Term**”) commenced on the Effective Date, except for **Sections 7.1 to 7.4**, which shall become effective immediately after First Commercial Power, and shall terminate in accordance with **Section 10.2**.

10.2 Termination

This Agreement shall terminate on the earliest to occur of any of the following events:

- (a) [Intentionally deleted];
- (b) [Intentionally deleted];
- (c) the 35th anniversary of First Commercial Power;
- (d) written agreement of the Parties to terminate;
- (e) all of the Transmission Assets are owned by Nalcor or its Affiliates; or
- (f) the Energy and Capacity Agreement is terminated.

10.3 Effect of Termination

- (a) Obligations on Termination - When this Agreement terminates:
- (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Sections 6.1 and 15.1**); and
 - (ii) neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 10.3**.
- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
- (i) the final settlement of all accounts between the Parties;
 - (ii) the resolution of any issue on any O&M Contracts outstanding at the end of the Term;
 - (iii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the end of the Term;
 - (iv) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement; and
 - (v) any other obligations that survive pursuant to **Section 18.13**.

ARTICLE 11 DEFAULT AND REMEDIES

11.1 Emera Events of Default

Except to the extent excused as a result of an event of Force Majeure in accordance with **Article 8**, the occurrence of one or more of the following events shall constitute a default by Emera under this Agreement (an “**Emera Default**”):

- (a) Emera fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Nalcor that such amount is due and owing;

- (b) Emera is in breach of **Section 5.9** and such breach remains uncured for a period of 30 days (or if the breach is capable of being cured and Emera is diligently pursuing the cure, such longer period of time as is agreed by Nalcor);
- (c) a distress or execution or similar legal process is levied or enforced upon or against any part of the Maritime Link, and the same remains unsatisfied for a period of 30 days (or if the legal process is capable of being cured, and Emera is diligently pursuing the cure, such longer period of time as is agreed by Nalcor);
- (d) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 11.1(a), 11.1(b) or 11.1(c)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor, unless the cure reasonably requires a longer period and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor;
- (e) any representation or warranty made by Emera in this Agreement is false or misleading in any material respect;
- (f) Emera ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (g) any Insolvency Event occurs with respect to Emera.

11.2 Nalcor Remedies upon Emera Event of Default

- (a) General - Upon the occurrence of an Emera Default and at any time thereafter, provided Nalcor is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Nalcor shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Nalcor are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Discharge of Encumbrances - Upon the occurrence of an Emera Default referred to in **Section 11.1(b)**, Nalcor may, without obligation to do so, make payment on behalf of Emera of such monies as may be required to obtain a discharge and release of any Encumbrance, other than a Permitted Encumbrance, affecting the Maritime Link

and any amount so paid by Nalcor shall bear interest at the Prime Rate plus 10% per annum from the date of advance and be payable by Emera to Nalcor on demand.

- (c) Losses - Subject to **Article 13**, Nalcor may recover all Losses suffered by Nalcor that are due to an Emera Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Nalcor to recover any amounts owed to Nalcor by Emera under this Agreement.

11.3 Nalcor Events of Default

Except to the extent excused as a result of an event of Force Majeure in accordance with **Article 8**, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a “**Nalcor Default**”):

- (a) Nalcor fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Emera that such amount is due and owing;
- (b) a distress or execution or similar legal process is levied or enforced upon or against any part of any of the Defined Assets other than the Maritime Link, and the same remains unsatisfied for a period of 30 days (or if the legal process is capable of being cured, and Nalcor is diligently pursuing the cure, such longer period of time as is agreed by Emera);
- (c) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 11.3(a)** or **11.3(b)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera;
- (d) any representation or warranty made by Nalcor in this Agreement is false or misleading in any material respect;
- (e) Nalcor ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (f) any Insolvency Event occurs with respect to Nalcor.

11.4 Emera Remedies upon Nalcor Event of Default

- (a) General - Upon the occurrence of a Nalcor Default and at any time thereafter, provided Emera is in material compliance with its obligations under this Agreement

and provided a right, remedy or recourse is not expressly stated as being the sole and exclusive right, remedy or recourse:

- (i) Emera shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
- (ii) the rights, remedies and recourse available to Emera are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to **Article 13**, Emera may recover all Losses suffered by Emera that are due to a Nalcor Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Emera to recover any amounts owed to Emera by Nalcor under this Agreement.

11.5 Equitable Relief

Nothing in this **Article 11** will limit or prevent either Party from seeking equitable relief, including specific performance or a declaration to enforce the other Party's obligations under this Agreement.

ARTICLE 12 LIABILITY AND INDEMNITY

12.1 Nalcor Indemnity

Nalcor shall indemnify, defend, reimburse, release and save harmless Emera and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the "**Emera Group**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Emera Group by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Nalcor Group occurring in connection with, incidental to or resulting from Nalcor's obligations under this Agreement.

12.2 Emera Indemnity

Emera shall indemnify, defend, reimburse, release and save harmless Nalcor and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the "**Nalcor Group**") from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Nalcor Group by or in favour of a third party to the

proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Emera Group occurring in connection with, incidental to or resulting from Emera's obligations under this Agreement.

12.3 Own Property Damage

For the avoidance of doubt, it is the Parties' intent that, subject to any right a Party may have to seek compensation from a third party who caused the Loss or from insurance, each Party shall be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements on the site of any of the Defined Assets (including, with respect to any member of the Nalcor Group, such property of such member of the Nalcor Group, and, with respect to any member of the Emera Group, such property of such member of the Emera Group), howsoever incurred, including Losses resulting from any O&M Activities or the action or inaction of the other Party or its Affiliates or Representatives.

12.4 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 12.1** or **12.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 12.4**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 12.4** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such

Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 12.4(h)**.

- (e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.
- (f) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable third party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.
- (g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be

entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.

- (h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 12.4** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

12.5 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured Claim, neither the Indemnified Party nor the Indemnitor, as the case may be, shall negotiate, settle, retain counsel to defend or defend any such Claim, without having first obtained the prior approval of the insurer(s) providing such insurance coverage.

ARTICLE 13 LIMITATION OF DAMAGES

13.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 12** and **Article 13** of this Agreement shall apply to any and all Claims.

13.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement or the O&M Activities, except that such consequential, incidental, indirect or punitive damages awarded against a member of the Nalcor Group or the Emera Group, as the case may be, with respect to matters relating to the O&M Activities, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 13.2**. For the purposes of this **Section 13.2**, lost revenues

or profits in relation to the purchase or sale of Energy or Capacity shall not be considered to be consequential, incidental or indirect damages, provided however that a Party must still establish such lost revenues or profits in accordance with Applicable Law.

13.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to (i) any insurance proceeds received or entitled to be received in relation to the Claim, and (ii) the value of any related, determinable Tax benefits realized or capable of being realized by the affected Party in relation to the occurrence of such net loss or cost.

13.4 No Breakage or Other Similar Financing Costs Permitted

Notwithstanding any other provision of this Agreement, neither Party shall be entitled to claim from the other Party any breakage fees or other similar fees or charges by a lender to a Party that are due to such lender by reason of such lender calling for early repayment of debt associated with a Party's financing related to the Formal Agreements or any Energy sales by Nalcor or an Affiliate of Nalcor.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

14.1 Nalcor Representations and Warranties

Nalcor represents and warrants to Emera that, as of the A&R Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Nalcor and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

- (e) except as disclosed by it to Emera in writing on or before the A&R Effective Date, there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the A&R Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

14.2 Emera Representations and Warranties

Emera represents and warrants to Nalcor that, as of the A&R Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Emera and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful

execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the A&R Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; and

- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 15

CONFIDENTIALITY AND INTELLECTUAL PROPERTY

15.1 Incorporation of Project NDA

The Parties agree that the Project NDA is incorporated in this Agreement by reference and applies to all Confidential Information disclosed by either Party to the other under or in connection with this Agreement, the Party disclosing Confidential Information being a Disclosing Party as defined in the Project NDA, and the Party receiving Confidential Information being a Receiving Party as defined in the Project NDA.

15.2 Disclosure of Agreement

Each Party hereby agrees to the other Party making this Agreement public at any time and from time to time after the Effective Date.

15.3 Intellectual Property

- (a) Rights Created by or for Emera - Emera shall be the first owner of all Emera Foreground IP.
- (b) Rights Created by or for Nalcor - Nalcor shall be the first owner of all Nalcor Foreground IP.
- (c) Assignment to Nalcor of Emera Foreground IP in the NL Transmission Assets - In the event Emera or any of its Affiliates is contracted by Nalcor or its Affiliates to do work on the NL Transmission Assets, and such work results in Emera Foreground IP, then effective and conditional upon payment for such work by Nalcor or its Affiliates, Emera hereby assigns to Nalcor, all of its right, title and interest in such Emera Foreground IP, free and clear of all Encumbrances, other than the licences and restrictions granted and continuing pursuant to this **Article 15**.
- (d) Assignment to Emera of Nalcor Foreground IP in the Maritime Link - In the event Nalcor or any of its Affiliates is contracted by Emera or its Affiliates to do work on the Maritime Link, and such work results in Nalcor Foreground IP, then effective and conditional upon payment for such work by Emera or its Affiliates, Nalcor hereby

assigns to Emera, all of its right, title and interest in such Nalcor Foreground IP, free and clear of all Encumbrances, other than the licences and restrictions granted and continuing pursuant to this **Article 15**.

- (e) O&M Owned IP Held in Trust - Each of Emera and Nalcor shall hold the O&M Owned IP owned by such Party, at any given time, in trust for the mutual benefit of Emera and Nalcor, and such Party shall have no right to license the O&M Owned IP to any third party except in accordance with **Section 15.5(c)**.
- (f) Grant of Licence - Subject to the terms hereof, each Party (a “**Granting Party**”) grants to the other Party (a “**Licensing Party**”):
 - (i) a non-exclusive, worldwide, fully paid-up licence to Use any of the O&M Owned IP owned by the Granting Party and any of the Granting Party’s Background IP in connection with all activity, licences and sublicences only as reasonably necessary or desirable for the purposes of the Transmission Assets, and for the use, operation, maintenance, repair, rehabilitation, replacement and expansion of each Transmission Asset during, and for its decommissioning and removal at the end of, its Service Life, and for ancillary purposes, including the operation, maintenance, repair, rehabilitation, replacement and expansion of electricity transmission facilities interconnected with the Transmission Assets;
 - (ii) a non-exclusive, worldwide, fully paid-up licence to Use any of the O&M Owned IP and any of the Granting Party’s Background IP necessary for the Licensing Party to exercise this licence to the O&M Owned IP for the Licensing Party’s and its Affiliates’ own business purposes, without any right to sublicense; and
 - (iii) a non-exclusive right to grant to third parties such non-exclusive, commercial sublicences to the O&M Owned IP and any of the Granting Party’s Background IP necessary for the exercise of the sublicensed right to the O&M Owned IP as the Parties may agree in accordance with **Section 15.5(c)**.
- (g) Licence Restrictions - The Licensing Party may not Use the trade-marks in the Background IP of the Granting Party, without the Granting Party’s prior written consent, evidencing care and control of the marks, on such commercially reasonable terms as the Granting Party may agree. The assignments in **Section 15.3(c)** and **Section 15.3(d)** shall be subject to the licences in **Section 15.3(f)**. Subject to **Section 15.5(c)**, the licences in **Section 15.3(f)** shall be royalty free and shall remain in full force and effect for the duration of the Intellectual Property Rights, provided that such licences shall not include Intellectual Property Rights arising after the earlier of:
 - (i) termination of this Agreement; and
 - (ii) the date of Nalcor’s acquisition of ownership of the Maritime Link pursuant to this Agreement or any other Formal Agreement.

- (h) Protection of O&M Owned IP Relating to Transmission Assets - Nalcor shall, at its own cost and expense, take all commercially reasonable steps to preserve and protect the value of the O&M Owned IP arising out of the O&M Activities on the NL Transmission Assets, using counsel of Nalcor's choice, and shall notify Emera in advance of all proposed steps in any process to secure registered Intellectual Property Rights in such O&M Owned IP. Nalcor may not file for patent protection or otherwise disclose such O&M Owned IP without the consent of Emera, where such filing or other disclosure would impact the Intellectual Property Rights of Emera. If Nalcor decides not to pursue patent protection for some O&M Owned IP arising out of the O&M Activities on the NL Transmission Assets, Emera shall have the right, at its cost and expense, to seek patent protection for such O&M Owned IP in Nalcor's name using counsel of Emera's choice.
- (i) Protection of O&M Owned IP Relating to Maritime Link - Emera shall, at its own cost and expense, take all commercially reasonable steps to preserve and protect the value of the O&M Owned IP arising out of the O&M Activities on the Maritime Link, using counsel of Emera's choice, and shall notify Nalcor in advance of all proposed steps in any process to secure registered Intellectual Property Rights in such O&M Owned IP. Emera may not file for patent protection or otherwise disclose such O&M Owned IP without the consent of Nalcor, where such filing or other disclosure would impact the Intellectual Property Rights of Nalcor. If Emera decides not to pursue patent protection for some O&M Owned IP arising out of the O&M Activities on the Maritime Link, Nalcor shall have the right, at its cost and expense, to seek patent protection for such O&M Owned IP in Emera's name using counsel of Nalcor's choice.
- (j) Pursuit of Application - Once a Party has filed for patent protection, it must diligently pursue all applications, and may not allow them to go abandoned or expire during their term without notifying the other Party and permitting the other Party to assume prosecution of such registered patents or patent applications; provided that the filing Party shall have the right to prosecute, amend and withdraw claims in any patent application without notifying the other Party unless such step would amount to the withdrawal or cancellation of all claims in respect of a particular invention.
- (k) Notice of Infringement - Each Party shall Notify the other Party if it becomes aware of any infringement or possible infringement of any of the O&M Owned IP by a third party. Neither Party is under any obligation to enforce any of the O&M Owned IP against third parties. Each Party shall have the right to bring a Claim for infringement of any of the O&M Owned IP by a third party in the name of the Party which owns the O&M Owned IP, if the owner does not do so within a reasonable period of time following receipt of Notice thereof. The Party choosing to bring a Claim shall bear its own costs and expenses in the proceeding, unless otherwise agreed. The Party not bringing a Claim referred to in this Section shall have the right to participate therein at its own cost and expense. In the event of a successful Claim, each of Nalcor and Emera shall be entitled to its IP Commercialization Share of any award or settlement after deduction of legal fees and disbursements

associated with the Claim. Neither Party may settle any Claim brought by it related to the O&M Owned IP without the consent of the other Party.

- (l) Assignment of O&M Owned IP to Nalcor on Transfer Date - Effective on and conditional upon the occurrence of Nalcor's acquisition of the Maritime Link pursuant to this Agreement or any other Formal Agreement:
 - (i) Emera hereby assigns to Nalcor all of its right, title and interest in such of the Emera Foreground IP not already assigned pursuant to **Section 15.3(c)** and all of the Nalcor Foreground IP previously assigned to Emera pursuant to **Section 15.3(d)**, free and clear of all Encumbrances; and
 - (ii) Nalcor hereby grants to Emera a licence to Use all of the O&M Owned IP not already licensed, for the same duration and on the same basis as the licences granted in **Section 15.3(f)**.

15.4 Intellectual Property Rights Licensed for the O&M Activities

If a Party enters into a licence or other similar arrangement with a third party in respect of any Third Party IP Rights for use in connection with that Party's obligations under this Agreement, that Party shall use commercially reasonable efforts to allow:

- (a) the other Party to Use such Third Party IP Rights for the purposes of that other Party's obligations under this Agreement; and
- (b) any O&M Contractor of either Party to Use such Third Party IP Rights for purposes contemplated by this Agreement.

15.5 Further Representations, Warranties and Covenants Regarding IP

- (a) Nalcor Representations and Warranties - Nalcor represents and warrants that:
 - (i) except to the extent of any Third Party Licensed IP or Emera IP incorporated therein, the Nalcor Foreground IP shall at all times prior to the assignment contemplated by **Section 15.3(d)** be owned by Nalcor, and shall be available for transfer to Emera as contemplated by **Section 15.3(d)**; and
 - (ii) Nalcor has the rights to grant the assignments and licences contemplated by this **Article 15**.
- (b) Emera Representations and Warranties - Emera represents and warrants that:
 - (i) except to the extent of any Third Party Licensed IP or Nalcor IP incorporated therein, the Emera Foreground IP shall at all times prior to the assignment contemplated by **Section 15.3(c)** be owned by Emera, and shall be available for transfer to Nalcor as contemplated by **Section 15.3(c)**, and except to the extent of any Third Party Licensed IP or any breach of **Section 15.5(a)(i)**, all Nalcor Foreground IP assigned to Emera in **Section 15.3(d)** shall, at all times

after the transfer in **Section 15.3(d)** and prior to Nalcor's acquisition of the Maritime Link pursuant to this Agreement or any other Formal Agreement, be owned by Emera, and shall be available for transfer back to Nalcor as contemplated by **Section 15.3(l)**; and

- (ii) Emera has the rights to grant the assignments and licences contemplated by this **Article 15**.
- (c) Commercialization and Reporting of Licensing Revenue - This **Section 15.5(c)** shall apply to all licences granted by owners to third parties of the O&M Owned IP held in trust pursuant to **Section 15.3(e)**, and to all sublicences granted by a Licensing Party to third parties pursuant to **Section 15.3(f)(iii)** (the "**Commercialization**") which may be made by Emera or its Affiliates, or Nalcor or its Affiliates (such licensor in each particular case, a "**Commercializing Party**"). The Party that is not the Commercializing Party or the applicable Affiliate of the Commercializing Party, in the particular case, is referred to herein as the "**Non-Commercializing Party**". In respect of:
 - (i) Commercialization sought by a Commercializing Party, the Commercializing Party shall obtain the consent of the Non-Commercializing Party prior to Commercialization, which consent may not be unreasonably withheld in respect of O&M Owned IP, and which consent may be arbitrarily withheld in respect of the Non-Commercializing Party's Background IP;
 - (ii) licences purported to be granted by a Commercializing Party without the requisite consent in **Section 15.5(c)(i)**, such licences shall be void and of no force or effect;
 - (iii) all Commercialization, the Commercializing Party shall, within 30 days of the end of the month in which a payment is received, (A) provide a detailed reporting of all payments received from time to time to the Non-Commercializing Party, and (B) pay to the Non-Commercializing Party the IP Commercialization Share to which it is entitled;
 - (iv) O&M Owned IP and any Background IP which has achieved Commercialization prior to the date of Nalcor's acquisition of ownership of the Maritime Link pursuant to this Agreement or any other Formal Agreement, the rights and obligations in **Sections 15.3(e), 15.3(g), 15.3(i), 15.3(j)** and **15.3(k)** and this **Section 15.5(c)**, and the right to grant sublicences in **Section 15.3(f)(iii)**, shall survive this Agreement and shall continue until they terminate on the IP Commercialization End Date; and
 - (v) O&M Owned IP or Background IP which has not achieved Commercialization prior to the date of Nalcor's acquisition of ownership of the Maritime Link pursuant to this Agreement or any other Formal Agreement, the rights and obligations in **Sections 15.3(e), 15.3(g), 15.3(i), 15.3(j)** and **15.3(k)** and this

Section 15.5(c), and the right to grant sublicences in **Section 15.3(f)(iii)**, shall terminate upon such date.

For greater certainty, neither Party may grant licences of the other Party's Background IP to any third party except as expressly set forth herein, and all revenues from Commercialization arising after the IP Commercialization End Date shall accrue to the owner of the O&M Owned IP at such time.

- (d) Audit of Licensing Revenue - The Non-Commercializing Party shall have the right, on reasonable notice, to audit or have its external auditors audit the books and records of the Commercializing Party to determine compliance with this **Article 15**. The audit shall be at the auditing Party's cost and expense unless the audit reveals a payment discrepancy of more than five percent, in which case the Commercializing Party shall pay all reasonable out-of-pocket costs and expenses associated with the audit. This right to audit shall survive for a period of two years following the IP Commercialization End Date.
- (e) Residuals - Subject to the terms and conditions of this Agreement, either Party may use and exploit any information or data developed or created in the course of performing the O&M Activities, which relates to the O&M Activities and which may be retained in the unaided memory of such Party's personnel, provided that in doing so such Party does not breach its obligations in the Project NDA, or infringe, violate or constitute a misappropriation of any Intellectual Property Right of any third party.
- (f) Parties Retain Ownership - Except as provided in this **Article 15**, or as may be expressly agreed in writing by a Party, neither Party will acquire any interest in or to the Intellectual Property Rights of the other Party.
- (g) Restrictions under Project NDA - The Parties acknowledge and agree that any exploitation of Intellectual Property Rights shall be subject to the Project NDA and the restriction on use of Proprietary Information (as defined in the NLDA) in Section 8.2 of the NLDA.

ARTICLE 16 ASSIGNMENT AND CHANGE OF CONTROL

16.1 Nalcor Assignment Rights

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Nalcor Rights**"), without the prior written consent of Emera, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera substantially in the form attached hereto as **Schedule 3**.

- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor will be deemed to be an assignment of Nalcor Rights requiring the prior written consent of Emera pursuant to **Section 16.1(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 16.1** will be null and void.

16.2 Emera Assignment Rights

- (a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Emera Rights**”) without the prior written consent of Nalcor, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that Emera enters into an agreement with Nalcor substantially in the form attached hereto as **Schedule 3**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an Emera Affiliate Assignee that would result in such Emera Affiliate Assignee no longer being an Affiliate of Emera will be deemed to be an assignment of Emera Rights requiring the prior written consent of Nalcor pursuant to **Section 16.2(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 16.2** will be null and void.

16.3 No Sale of Maritime Link

Emera shall not sell or otherwise transfer or dispose of the Maritime Link or any part thereof or any interest of Emera therein without the prior written consent of Nalcor, which consent may be arbitrarily withheld.

16.4 Nalcor Option

If any of the assets or arrangements contemplated by the Formal Agreements held by Emera or any Affiliate of Emera become beneficially owned or beneficially Controlled by any government or government-Controlled electrical utility competitor of Nalcor, Nalcor shall have the option to acquire ownership of the Maritime Link. If Nalcor gives Notice to Emera of Nalcor's exercise of such option, the Parties shall negotiate and enter into an agreement containing the terms and conditions upon which the Maritime Link shall be transferred to Nalcor. **Section 1.2(m)(i)** applies to this **Section 16.4**.

ARTICLE 17 DISPUTE RESOLUTION

17.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 1** (the "**Dispute Resolution Procedure**").
- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 17**, without prejudice to either Party's rights pursuant to this Agreement.
- (c) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

17.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the "**Claiming Party**") intending to assert a Claim against the other Party (the "**Recipient Party**") shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party's failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.
- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied

upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 18 MISCELLANEOUS PROVISIONS

18.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9

Attention: Chief Executive Officer
Fax: (709) 737-1782

with a copy to:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Corporate Secretary
Fax: (709) 737-1782

To Emera:

Emera Inc.
1223 Lower Water Street
Halifax, NS
B3J 3S8
Attention: Corporate Secretary
Fax: (902) 428-6112

with a copy to:

NSP Maritime Link Incorporated
9 Austin Street
St. John's, NL
A1B 4C1
Attention: President
Fax: (709) 722-2083

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission and confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt; provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Either Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Party.

18.2 **Prior Agreements**

Except for the Assignment of Joint Operations Agreement dated January 28, 2013 among Emera, NSP Maritime Link Incorporated and Nalcor, this Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof (including the Term Sheet, the Sanction Agreement and, subject to **Section 1.6**, the Original JOA). There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

18.3 **Counterparts**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

18.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

18.5 Announcements

No announcement with respect to this Agreement shall be made by either Party without the prior approval of the other Party. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Party before making any such announcement and gives due consideration to the views of the other Party with respect thereto. Both Parties shall use reasonable efforts to agree on the text of any proposed announcement.

18.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the O&M Activities shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting either Party as the agent or legal representative of the other Party for any purpose nor to permit either Party to enter into agreements or incur any obligations for or on behalf of the other Party.

18.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

18.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

18.9 Time of the Essence

Time shall be of the essence.

18.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by both Parties.

18.11 No Waiver

Any failure or delay of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

18.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

18.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

18.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

18.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

18.16 **Capacity of Nalcor**

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown.

[Remainder of this page intentionally left blank.]

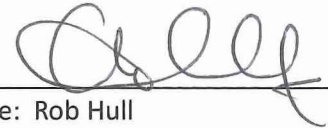
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy,
in the presence of:


Name: James Meaney

NALCOR ENERGY

By: 
Name: Ed Martin
Title: President and Chief Executive Officer

By: 
Name: Rob Hull
Title: General Manager, Finance

We have authority to bind the corporation.

Executed and delivered by Emera Inc.,
in the presence of:

Name: Rene Gallant

EMERA INC.

By: _____
Name: Chris Huskilton
Title: President and Chief Executive Officer

By: _____
Name: Nancy Tower
Title: Executive Vice-President, Business Development

We have authority to bind the company.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy,
in the presence of:

NALCOR ENERGY

By: _____
Name: Ed Martin
Title: President and Chief Executive Officer

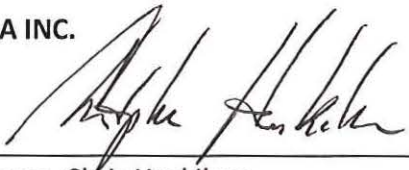
Name: James Meaney

By: _____
Name: Rob Hull
Title: General Manager, Finance

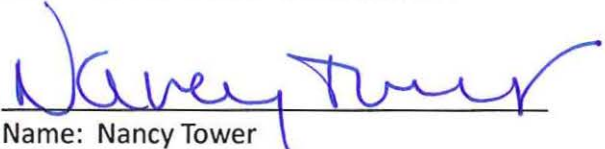
We have authority to bind the corporation.

Executed and delivered by Emera Inc.,
in the presence of:

EMERA INC.

By:  _____
Name: Chris Huskison
Title: President and Chief Executive Officer

 _____
Name: Rene Gallant

By:  _____
Name: Nancy Tower
Title: Executive Vice-President, Business Development

We have authority to bind the company.

JOINT OPERATIONS AGREEMENT

SCHEDULE 1

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Schedule, the definitions set forth in the Articles of Agreement apply and in addition thereto:

“Appointment Date” has the meaning set forth in **Section 6.4**;

“Arbitration Act” means the *Arbitration Act* (Newfoundland and Labrador);

“Arbitration Notice” has the meaning set forth in **Section 5.1(a)**;

“Arbitration Procedure” means the provisions of **Section 5**;

“Arbitrator” means an arbitrator appointed pursuant to the Arbitration Procedure;

“Articles of Agreement” means the main body of the Agreement;

“Chair” means the person elected or appointed to chair the Tribunal;

“Code” means the Commercial Arbitration Code as set out in the *Commercial Arbitration Act* (Canada) as of the Effective Date, a copy of which is attached hereto as **Appendix A**;

“Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party consents to arbitration of the Dispute referred to in the Arbitration Notice;

“Delegate” has the meaning set forth in **Section 6.3(c)**;

“Dispute Context” has the meaning set forth in **Section 6.6**;

“document” includes a film, photograph, videotape, chart, graph, map, plan, survey, book of account, recording of sound, and information recorded or stored by means of any device;

“Expert Determination Procedure” means the provisions of **Section 6**;

“General Dispute” means a Dispute that is not a Specified Dispute;

“Independent Expert” means the Person appointed as such to conduct an expert determination in accordance with the Expert Determination Procedure;

“Information” means all documents and information, including Confidential Information, disclosed by a Party for the purposes of this Dispute Resolution Procedure;

“Initial Meeting” has the meaning set forth in **Section 6.8**;

“Mediation Notice” has the meaning set forth in **Section 4.1(a)**;

“Mediation Procedure” means the provisions of **Section 4**;

“Mediation Response” has the meaning set forth in **Section 4.1(d)**;

“Mediator” means the mediator appointed pursuant to the Mediation Procedure;

“Negotiation Procedure” means the provisions of **Section 3**;

“Non-Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party does not consent to arbitration of the Dispute referred to in the Arbitration Notice;

“Notified Party” has the meaning set forth in **Section 5.1(a)**;

“Notifying Party” has the meaning set forth in **Section 5.1(a)**;

“Referral Notice” has the meaning set forth in **Section 6.1**;

“Referring Party” has the meaning set forth in **Section 6.1**;

“Requesting Party” has the meaning set forth in **Section 4.1(a)**;

“Responding Party” has the meaning set forth in **Section 6.1**;

“Response” has the meaning set forth in **Section 6.9(b)**;

“Review Notice” has the meaning set forth in **Section 3.1**;

“Specified Dispute” means a Dispute required to be finally resolved by expert determination and specified as such in the Articles of Agreement;

“Submission” has the meaning set forth in **Section 6.9(a)**;

“Terms of Reference” has the meaning set forth in **Section 6.4**; and

“Tribunal” means either a single Arbitrator or a panel of Arbitrators, as the case may be, appointed pursuant to the Arbitration Procedure to serve as the arbitrator or arbitrators of a General Dispute.

1.2 Section References

Unless otherwise indicated, all references in this Schedule to a “Section” followed by a number and/or a letter refer to the specified Section of this Schedule.

1.3 **Appendix**

The following Appendix is attached to and incorporated by reference in this Schedule, and is deemed to be part hereof:

Appendix A - *Commercial Arbitration Code (Canada)*

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 **Purpose and Sequence of Dispute Resolution**

The purpose of this Schedule is to set forth a framework and procedures to resolve any Disputes that may arise under the Agreement in an amicable manner, in private and confidential proceedings, and where possible, without resort to litigation. The Parties agree to exclusively utilize the following process to achieve this goal, which shall be undertaken in the following order:

- (a) first, by referring the Dispute to negotiation pursuant to the Negotiation Procedure; and
- (b) in the case of a General Dispute:
 - (i) second, by way of mediation pursuant to the Mediation Procedure; and
 - (ii) third, either:
 - (A) by arbitration pursuant to the Arbitration Procedure where the Parties agree or are deemed to have agreed to arbitration; or
 - (B) by litigation, where the Parties do not agree and are not deemed to have agreed to arbitration pursuant to the Arbitration Procedure; or
- (c) in the case of a Specified Dispute, second by expert determination in accordance with the Expert Determination Procedure.

2.2 **Confidentiality**

- (a) Subject to **Section 2.2(b)**, all Information disclosed by a Party pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure shall be treated as confidential by the Parties and any Mediator, Arbitrator or Independent Expert. Neither the disclosure nor production of Information will represent any waiver of privilege by the disclosing Party. Each Party agrees not to disclose Information provided by the other Party for the purposes hereof to any other Person for any other purpose. Further, such Information shall not be used in any subsequent proceedings without the consent of the Party that disclosed it.

- (b) **Section 2.2(a)** does not prevent a Party from disclosing or using Information not received by it exclusively pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure as and to the extent permitted under the Project NDA.

2.3 Interim Measures

Either Party may apply to a court for interim measures to protect its interest during the period that it is attempting to resolve a Dispute prior to the constitution of a Tribunal, including preliminary injunction or other equitable relief concerning that Dispute. The Parties agree that seeking and obtaining any such interim measure will not waive the Parties' obligation to proceed in accordance with **Section 2.1**.

2.4 Parties to Proceedings

- (a) For the purposes of this Schedule and any Dispute submitted for resolution hereunder, any of Nalcor Energy and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively, and any of Emera Inc. and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively. When applicable, in this Schedule references to a "Party" are to either such collective, and references to the "Parties" are to both such collectives.
- (b) Notwithstanding **Section 2.4(a)**, (i) any Notice given by Nalcor or an Affiliate of Nalcor in connection with this Dispute Resolution Procedure shall be given to Emera Inc., if it is a Party, and to all Affiliates of Emera Inc. that are Parties, and (ii) any Notice given by Emera or an Affiliate of Emera in connection with this Dispute Resolution Procedure shall be given to Nalcor Energy, if it is a Party, and to all Affiliates of Nalcor Energy that are Parties.

2.5 Mediator or Arbitrator as Witness

The Parties agree that any Mediator or Arbitrator appointed hereunder shall not be compelled as a witness in any proceedings for any purpose whatsoever in relation to the Agreement.

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by either Party by Notice to the other Party requesting a review under this **Section 3** (a "**Review Notice**"). Each Party shall be afforded a reasonable opportunity to present all relevant Information regarding its position to the other Party's representative. The Parties shall consider the Information provided and seek to resolve the Dispute through negotiation. Negotiations shall be concluded within 15

Business Days from the date of delivery of the Review Notice or within such extended period as may be agreed in writing by the Parties.

3.2 Reservation of Rights

Except to the extent that such negotiations result in a settlement, such negotiations and exchange of Information will be without prejudice and inadmissible against a Party's interest in any subsequent proceedings and neither Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

3.3 Failure of Negotiations

If the Parties have not resolved the Dispute to the satisfaction of both Parties within 15 Business Days after delivery of the Review Notice, or within such extended period as may be agreed in writing by the Parties, negotiations will be deemed to have failed to resolve the Dispute and either Party may then request that the matter be referred to non-binding mediation pursuant to the Mediation Procedure.

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

- (a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the “**Requesting Party**”), by Notice to the other Party given within five Business Days after expiry of the period set out in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a “**Mediation Notice**”) containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.
- (b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.
- (c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:
 - (i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;
 - (ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;
 - (iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;

- (iv) either Party gives Notice to the other Party that it terminates the mediation;
 - (v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;
 - (vi) **Section 4.3(d)** applies; or
 - (vii) the Dispute is settled as provided in **Section 4.4**.
- (d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the “**Mediation Response**”) to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 Appointment of Mediator

Within 10 Business Days after receipt of the Mediation Response by the Requesting Party, the Parties shall attempt to appoint a Mediator to assist the parties in resolving the Dispute. The appointment shall be in writing and signed by the Parties and the Mediator.

4.3 Mediation Process

- (a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.
- (b) The location of the mediation will be St. John’s, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.
- (c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.
- (d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.
- (e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally

(or in such other proportions as they may agree), including the costs of or attributable to the Mediator and the facilities used for the mediation.

4.4 Reservation of Rights

Any mediation undertaken hereunder will be non-binding, and except to the extent a settlement is reached, will be considered without prejudice and inadmissible against a Party's interest in any subsequent proceedings and neither Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

- (a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3**:
 - (i) either Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Party (the “**Notified Party**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, to proceed with resolution of the General Dispute pursuant to **Section 2.1(b)(ii)(B)**.
- (b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.
- (c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.
- (d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.
- (e) Notwithstanding **Sections 5.1(b)**, **5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.
- (f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by

arbitration pursuant to this **Section 5**. The arbitration will be subject to the Arbitration Act and conducted in accordance with the Code, as supplemented and modified by this **Section 5**.

5.2 Provisions Relating to the Arbitration Act and the Code

- (a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.
- (b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.
- (c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the “arbitration agreement”.
- (d) A reference in the Code to “a court or other authority specified in article 6”, will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.
- (e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.
- (f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.
- (g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.
- (h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have both agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.
- (i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 Appointment of Tribunal

- (a) Subject to **Section 5.4**, the arbitration will be heard and determined by three Arbitrators. Each Party shall appoint an Arbitrator of its choice within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration. The Party-appointed Arbitrators shall in turn appoint a third Arbitrator, who shall act as Chair of the Tribunal, within 20 Business Days after the appointment of both Party-appointed Arbitrators. If the Party-appointed Arbitrators cannot reach agreement on a third Arbitrator, or if a Party fails or refuses to appoint its Party-appointed Arbitrator within 20 Business Days after delivery or deemed delivery of the Consent

to Arbitration, the appointment of the Chair of the Tribunal and the third Arbitrator will be made in accordance with Article 11 of the Code.

- (b) Except for the appointment of an Arbitrator pursuant to the Code, the appointment of an Arbitrator must be in writing and accepted in writing by the Arbitrator.

5.4 Arbitration by Single Arbitrator

The arbitration will be heard and determined by one Arbitrator where the Parties agree to arbitration by a single Arbitrator and jointly appoint the Arbitrator within 15 Business Days after the Consent to Arbitration is given or deemed to have been given. If the Parties do not agree to arbitration by a single Arbitrator and appoint the Arbitrator within such time, the arbitration will be heard by three Arbitrators appointed pursuant to **Section 5.3**.

5.5 Procedure

- (a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.
- (b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.
- (c) If the Parties initiate multiple arbitration proceedings under the Agreement and other Formal Agreements, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may, with the written consent of all Parties in all such proceedings, be consolidated into a single arbitration proceeding.
- (d) The Parties may agree as to the manner in which the Tribunal shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing such agreement within 20 Business Days from the date of selection or appointment of the Tribunal, the Tribunal shall promptly and expeditiously conduct the arbitration proceedings in accordance with the Code. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.
- (e) Nothing in this **Section 5** will prevent either Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with the Arbitration Procedure, or to prevent manifestly unfair or unequal treatment of either Party.
- (f) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Schedule or of the Code.

5.6 Awards

- (a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.
- (b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.
- (c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.
- (d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.
- (e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus three percent per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is paid in full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 Settlement

If the Parties settle the Dispute before the Tribunal delivers its written award, the arbitration will be terminated and the Tribunal shall record the terms of settlement in the form of an award made on consent of the Parties.

SECTION 6 – EXPERT DETERMINATION PROCEDURE

6.1 Referral for Expert Determination

Where permitted or required by the Agreement, a Party (the “**Referring Party**”) may by Notice to the other Party (the “**Responding Party**”) require referral of a Specified Dispute to an Independent Expert for determination pursuant to this **Section 6** (the “**Referral Notice**”).

6.2 Qualifications of Independent Expert

Any Independent Expert appointed under this **Section 6** shall be:

- (a) independent of each of the Parties;
- (b) of national or international standing;

- (c) well qualified by education, technical training and experience, and hold the appropriate professional qualifications, to determine the matters in issue in the Specified Dispute; and
- (d) impartial and have no interest or obligation in conflict with the task to be performed as an Independent Expert for the Parties. Without limiting the generality of the foregoing, a conflict will be deemed to exist, unless otherwise agreed in writing by the Parties, if the Independent Expert at any time previously performed work in connection with matters covered by any of the Formal Agreements, or during the preceding three years performed any other work for either of the Parties or any of their Affiliates. Any direct or beneficial equity interest the Independent Expert has in one or more of the Parties or their Affiliates, or *vice versa*, shall be declared by each Party and the Independent Expert prior to the Independent Expert being retained.

6.3 Selection of the Independent Expert

- (a) Within 10 Business Days after delivery of the Referral Notice, each Party shall deliver to the other Party, in a simultaneous exchange, a list of the names of five Persons (ranked 1 - 5 in order of preference, 5 being that Party's first preference) who are acceptable to the Party to act as the Independent Expert. If one Person only is named in both lists, that Person shall be the Independent Expert to determine the Specified Dispute. If more than one Person is named in both lists, the Person with the highest total numerical ranking, determined by adding the rankings from both lists, shall be the Independent Expert to determine the Specified Dispute. In the event of a tie in the rankings, the Person to be the Independent Expert shall be selected by lot from among those of highest equal rank.
- (b) If the Parties fail to select an Independent Expert from the initial lists provided pursuant to **Section 6.3(a)**, the process under **Section 6.3(a)** shall be repeated with a second list of five names from each Party, except that the Parties shall exchange lists within five Business Days after the end of the 10 Business Day period under **Section 6.3(a)**.
- (c) If the Parties fail to select an Independent Expert pursuant to **Section 6.3(a)** or **6.3(b)** or otherwise within 15 Business Days after the Referral Notice is given, within a further period of five Business Days after the end of such 15 day period the Parties shall jointly request the President of ADR Chambers in Toronto, Ontario or his or her designate (the "**Delegate**") to appoint the Independent Expert from a list submitted by the Parties with the request. Each Party may nominate up to three proposed Independent Experts for inclusion on the list. The Parties shall not advise the Delegate which Party nominated a particular nominee. Each Party shall be responsible for one-half of the costs of the Delegate.

6.4 Terms of Reference

Once an Independent Expert is selected pursuant to **Section 6.3**, the Parties shall use commercially reasonable efforts to enter into an appropriate engagement agreement with the Independent Expert (the “**Terms of Reference**”) as soon as practicable, and in any event within 20 Business Days, after selection of the Independent Expert pursuant to **Section 6.3**. Failure of the Parties and the Independent Expert to agree upon the Terms of Reference will be deemed to be a General Dispute and the Terms of Reference will be resolved by a single Arbitrator pursuant to the Arbitration Procedure. The date of execution of the Terms of Reference by all of the Parties and the Independent Expert is herein called the “**Appointment Date**”.

6.5 Information Provided to Independent Expert

For the purpose of the Expert Determination Procedure, the Parties shall provide to the Independent Expert the following within five Business Days after the Appointment Date:

- (a) a copy of the Agreement, including the Schedules;
- (b) copies of or full access to all documents relevant to the Specified Dispute to be determined by the Independent Expert; and
- (c) other data and reports as may be mutually agreed by the Parties.

6.6 Dispute Context

The Independent Expert shall review and analyze, as necessary, the materials provided to it by the Parties pursuant to **Section 6.5**. The Independent Expert shall make its determination pursuant to the Terms of Reference based upon the materials provided by the Parties and in accordance with the Article, Section or Schedule of the Agreement under which the Specified Dispute to be determined arose (the “**Dispute Context**”).

6.7 No ex parte Communication

No communication between the Independent Expert and either of the Parties shall be permitted from the Appointment Date until after delivery of the Independent Expert’s final decision except:

- (a) with the approval of both Parties;
- (b) as provided by this **Section 6**; or
- (c) to address strictly administrative matters.

All communications permitted by this **Section 6.7** between either Party and the Independent Expert shall be conducted in writing, with copies sent simultaneously to the other Party in the same manner.

6.8 Initial Meeting and Joint Presentations by the Parties

Within 10 Business Days after the Appointment Date, the Independent Expert and the Parties shall attend an initial informational meeting (the “**Initial Meeting**”) in St. John’s, Newfoundland and Labrador, or at such other location as may be mutually agreed by the Parties, at a time, date and location as determined by the Independent Expert, at which the Parties shall provide an overview of the Specified Dispute to be determined, review the Expert Determination Procedure, and establish a timetable and deadlines for the Independent Expert’s review, all of which are to be consistent with the Agreement.

6.9 Written Submissions and Responses

- (a) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after the Initial Meeting, each Party shall provide to the Independent Expert a written submission (a “**Submission**”) respecting its interpretation and evaluation of the Specified Dispute.
- (b) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after receipt of the other Party’s Submission, each Party shall have the opportunity to provide comments on the other Party’s Submission by written submissions (a “**Response**”) provided to the Independent Expert and the other Party.
- (c) The Parties shall provide any Information deemed necessary by the Independent Expert to complete the evaluation required pursuant to this **Section 6**.
- (d) A Party that fails to submit a Submission or a Response to the Independent Expert within the time allowed by this **Section 6.9** will be deemed to have waived its right to make a Submission or Response, as the case may be.

6.10 Independent Expert Clarifications

- (a) Following receipt of the Submissions and Responses, the Independent Expert may, at its discretion, seek any number of clarifications with respect to any aspect of either Party’s Submission or Response. Such requests for clarifications shall be made by the Independent Expert in writing and the clarifications by the Parties shall be made in writing as requested by the Independent Expert, provided that the other Party shall be provided with a copy of such requests and clarifications.
- (b) The purpose of such clarifications will be to allow the Independent Expert to fully understand the technical and/or financial basis and methodologies used in the preparation of the Submission and Response of each Party, it being understood that each Party’s Submission and Response will be the primary basis upon which the Independent Expert shall make its determination.
- (c) All requests for clarifications and all questions in relation thereto will be initiated or posed exclusively by the Independent Expert to the Party from whom clarification is

sought as seen fit by the Independent Expert, in its sole discretion, and free of any interruption or interjection by the other Party. Neither Party will have any right to cross-examine the other Party in respect of such Party's Submission or Response or its responses to the Independent Expert pursuant to this **Section 6.10**.

6.11 Method of Evaluation

- (a) The Independent Expert's assessment shall include the method of evaluation elements set out in the Dispute Context.
- (b) The Independent Expert's assessment, including its economic model, cash flows and analysis, if any, will be made available to the Parties.

6.12 Decision and Presentation of Report

The Independent Expert shall complete its assessment and deliver a written decision of its determination of the Specified Dispute within 40 Business Days after the Independent Expert's receipt of the Responses.

6.13 Costs of Expert Determination

Each Party shall be responsible for one-half of the costs of the Independent Expert. Each Party shall bear its own costs related to the expert determination.

6.14 Effect of Determination

- (a) The Independent Expert's determination pursuant to this **Section 6** will be final and binding upon the Parties and not reviewable by a court for any reason whatsoever.
- (b) The Independent Expert is not an arbitrator of the Specified Dispute and is deemed not to be acting in an arbitral capacity. The Independent Expert's determination pursuant to this **Section 6** is not an arbitration under the Arbitration Act or any other federal or provincial legislation.

6.15 Settlement

If the Parties settle the Specified Dispute before the Independent Expert delivers its written decision, the expert determination will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

**Appendix A
to Dispute Resolution Procedure**

COMMERCIAL ARBITRATION CODE

Appendix A COMMERCIAL ARBITRATION CODE

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

Note: The word "international", which appears in paragraph (1) of article 1 of the Model Law, has been deleted from paragraph (1) of article 1 below. Paragraphs (3) and (4) of article 1, which contain a description of when arbitration is international, are deleted. Paragraph (5) appears as paragraph (3).

Any additions or substitutions to the Model Law are indicated by the use of italics.

Except as otherwise indicated, the material that follows reproduces exactly the Model Law.

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

- (1) This Code applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.
- (2) The provisions of this Code, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.
- (3) This Code shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Code.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this Code:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;
- (d) where a provision of this Code, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Code refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Code, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
- (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this *Code* from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

ARTICLE 5
EXTENT OF COURT INTERVENTION

In matters governed by this *Code*, no court shall intervene except where so provided in this *Code*.

ARTICLE 6
COURT OR OTHER AUTHORITY FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE AND SUPERVISION

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by *the Federal Court or any superior, county or district court*.

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(c) a party fails to act as required under such procedure, or

(d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(e) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12 GROUNDS FOR CHALLENGE

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

ARTICLE 13 CHALLENGE PROCEDURE

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

ARTICLE 15 APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16 COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17 POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18 EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

- (1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 20
PLACE OF ARBITRATION

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 22
LANGUAGE

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

ARTICLE 25
DEFAULT OF A PARTY

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of *Canada* assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

ARTICLE 29

DECISION-MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

ARTICLE 30

SETTLEMENT

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31

FORM AND CONTENTS OF AWARD

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

ARTICLE 32
TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
- (a) the party making the application furnishes proof that:
- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of *Canada*; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code*; or
- (b) the court finds that:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or
 - (ii) the award is in conflict with the public policy of *Canada*.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of *Canada*, the party shall supply a duly certified translation thereof into such language.

ARTICLE 36 GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of *Canada*.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

JOINT OPERATIONS AGREEMENT

SCHEDULE 2

FORMAL AGREEMENTS

FORMAL AGREEMENTS

1. Maritime Link - Joint Development Agreement
2. Energy and Capacity Agreement
3. Maritime Link (Nalcor) Transmission Service Agreement
4. Maritime Link (Emera) Transmission Service Agreement
5. Nova Scotia Transmission Utilization Agreement
6. New Brunswick Transmission Utilization Agreement
7. MEPCO Transmission Rights Agreement
8. Interconnection Operators Agreement
9. Joint Operations Agreement
10. Newfoundland and Labrador Development Agreement
11. Labrador-Island Link Limited Partnership Agreement
12. Inter-Provincial Agreement
13. Supplemental Agreement

JOINT OPERATIONS AGREEMENT

SCHEDULE 3

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF [NAME OF] AGREEMENT

[NTD: Form to be amended as required if only a portion of the Assignor's interest in the Assigned Agreement is being transferred to the Assignee, including appropriate amendments to Sections 2.1, 2.2 and 2.3.]

THIS ASSIGNMENT AGREEMENT is made effective the • day of •, 20__ ("Effective Date")

AMONG:

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown ("**Nalcor**")

- or -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia ("**Emera**")

- and -

AFFILIATE of NALCOR or EMERA, a [type of entity and jurisdiction or statute of incorporation or formation] ("**Assignee**")

- and -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia ("**Emera**")

- or -

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown ("**Nalcor**")

[NTD: Need to add Affiliate of Nalcor or Emera, as applicable, as party in event of prior assignments.]

WHEREAS:

- A. Nalcor Energy and Emera Inc. have entered into a Term Sheet dated November 18, 2010 (the "**Term Sheet**") confirming their common understanding of the purpose, process and timing for the supply and delivery of power and energy from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England;

- B. Nalcor and Emera entered into a _____ Agreement on _____, 2012 (the “**Assigned Agreement**”) [NTD: Need to add any required references to other assigned rights];

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person, provided however that the NL Crown shall be deemed not to be an affiliate of Nalcor;

“**Agreement**” means this agreement, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“**Applicable Law**” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of and the terms of all judgments, orders and decrees issued by any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“**Assigned Agreement**” has the meaning set forth in the recitals;

“**Assignee**” means _____, an Affiliate of the Assignor;

“**Assignor**” means [Nalcor/Emera or an Affiliate of Nalcor/Emera, as applicable];

“**Authorized Authority**” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“**Business Day**” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL, or in Halifax Regional Municipality, NS;

“Consenting Party” means [Nalcor/Emera or, if applicable as a result of prior assignments, specified Affiliates];

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have correlative meanings);

“Dispute Resolution Procedure” has the meaning set forth in **Section 4.1(a)**;

“Effective Date” has the meaning set forth in the commencement of this Agreement;

“Emera” has the meaning set forth in the preamble to this Agreement and includes Emera’s successors and permitted assigns;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Income Tax Act” means the *Income Tax Act* (Canada);

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an

assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Knowledge” means in the case of a Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“NL Crown” means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

“Parties” means the parties to this Agreement, and **“Party”** means one of them;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL, when referring to the Regular Business Hours of Nalcor, and 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS, when referring to the Regular Business Hours of Emera;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than a tariff or fees in respect of electricity transmission services) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Term Sheet” has the meaning set forth in the preamble to this Agreement;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the

construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**” or “**Section**” followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.

- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

ARTICLE 2 ASSIGNMENT

2.1 Assignment to Affiliate

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Agreement and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Agreement and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Agreement as of the Effective Date and covenants and agrees with the Assignor and the Consenting Party to assume the covenants and obligations of the Assignor under the Assigned Agreement. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Agreement arising on and in respect of matters occurring after the Effective Date.

2.3 Limitations on Assignment / Assumption

The Assignor reserves to itself and does not assign to the Assignee, and the Assignee does not assume from the Assignor the following rights and/or obligations:

(a)

(b)

2.4 Confirmation of Status of Assigned Agreement

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Party is in default of any of its obligations under the Assigned Agreement. The Consenting Party hereby confirms to the Assignee that neither it nor, to its Knowledge, the Assignor is in default of any of its obligations under the Assigned Agreement.

2.5 Assignor to Remain Liable

Notwithstanding the foregoing, [Nalcor/Emera] expressly acknowledges and agrees that it shall remain liable to the Consenting Party as a primary obligor under the Assigned Agreement to observe and perform all of the conditions and obligations in the Assigned Agreement which the Assignor, and as of the Effective Date the Assignee, are bound to observe and perform.

2.6 [Nalcor/Emera] Defaults

The Assignee shall be in default of the Assigned Agreement if at any time:

- (a) [Nalcor/Emera] ceases to carry on all or substantially all of its business or, except as permitted under the Assigned Agreement, transfers all or substantially all of its undertaking and assets; or
- (b) an Insolvency Event occurs with respect to [Nalcor/Emera].

2.7 Acknowledgement of Consenting Party

The Consenting Party acknowledges, consents to and accepts the within assignment and assumption of the Assigned Agreement, subject to the terms and conditions herein and confirms to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Agreement.

2.8 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and
 - (ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.10**.

2.9 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.9(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.10 Invoicing

All invoices issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

2.11 Payment and Offset

- (a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.12 HST Registration Status

- (a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

- (b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

2.13 [●]

[Insert any provision required by the Assigned Agreement to be included.]

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1 Assignor and Assignee Representations and Warranties

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to the Consenting Party that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary [corporate] action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are [no Legal Proceedings **NTD: or set out Legal Proceedings, if any.**]pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and [**NTD: set out any required Regulatory Approvals**];

- (g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and
- (h) the Assignee is an Affiliate of the Assignor.

ARTICLE 4 DISPUTE RESOLUTION PROCEDURE

4.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule “[]” to the Assigned Agreement (the “**Dispute Resolution Procedure**”).
- (b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Assigned Agreement]**

ARTICLE 5 MISCELLANEOUS PROVISIONS

5.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

To Assignor:

[•]

To Assignee:

[•]

To Consenting Party:

[•]

[To Nalcor/Emera:]

[•]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and be confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the

Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Any Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

5.3 Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

5.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

5.5 Announcements

No announcement with respect to this Agreement shall be made by any Party without the prior approval of the other Parties. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Parties before making any such announcement and gives due consideration to the views of the other Parties with respect thereto. The Parties shall use reasonable efforts to agree on the text of any proposed announcement.

5.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, this Agreement shall not be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of the other Parties for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of the other Parties.

5.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

5.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all Parties.

5.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of a Party receiving such consent or approval.

5.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as

the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

5.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

5.16 [Capacity of Nalcor

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown. **NTD: Include if Nalcor signing Agreement.]**

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Assignor

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the
[company]/[corporation]

Assignee

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the
[company]/[corporation]

Consenting Party

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the
[company]/[corporation]

**[NTD: Need to add Nalcor or Emera, as applicable, in
event of prior assignments]**

NALCOR ENERGY

and

EMERA INC.

and

NOVA SCOTIA POWER INCORPORATED

ENERGY ACCESS AGREEMENT

April 13, 2015

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	2
1.1 Definitions	2
1.2 Construction of Agreement	17
1.3 Conflicts between Parts of Agreement	19
1.4 Applicable Law and Submission to Jurisdiction	19
1.5 Schedules	20
ARTICLE 2 NALCOR FORECASTS AND NSPI SOLICITATIONS	20
2.1 Nalcor Forecasts	20
2.2 NSPI Solicitations	21
2.3 Nalcor Bid	21
2.4 Nalcor Bid Price	22
2.5 Acknowledgement of NSPI Acceptance	23
2.6 Purchase and Sale Obligation	23
2.7 NSPI Third Party Solicitations	23
2.8 Nalcor Third Party Transactions	23
ARTICLE 3 PROVISIONS GOVERNING ENERGY TRANSACTIONS	24
3.1 Master Power Sale and Purchase Agreement	24
3.2 Purchase and Sale at the Delivery Point	24
3.3 Energy-Only Product	24
3.4 End Use Consumption Only	24
3.5 Scheduling of Energy Deliveries	24
3.6 Rescheduled Delivery	25
3.7 Measurement and Metering	26
ARTICLE 4 ENERGY AVAILABILITY COMMITMENT	26
4.1 Energy Availability Commitment	26
4.2 Determination of Commitment Fulfilment	27
ARTICLE 5 VARIANCES	27
5.1 Nalcor Progress Report	27
5.2 Resolution Process	28
5.3 Negotiated Solution	28
5.4 Effect of Variance on Nalcor Commitment Obligation	28
5.5 Emera and Nalcor Variance Amounts	28
5.6 Commercial Terms Governing Emera Variance Amount Transactions	31
5.7 Emera Wind with Nalcor Balancing Option	32
5.8 Nalcor Balancing	32
5.9 Sources of Supply	33
5.10 Wind Generation	33

ARTICLE 6 PERMITS, LICENCES AND APPLICABLE LAW	34
6.1 Licences and Compliance with Law	34
ARTICLE 7 CREDIT SUPPORT, PAYMENT AND AUDIT RIGHTS.....	34
7.1 Credit Assurances	34
7.2 Payment Terms Prescribed by Master Agreements	34
7.3 Record Keeping and Audit Rights	34
ARTICLE 8 TAXES	35
8.1 Tax-Related Terms Prescribed by Master Agreements	35
ARTICLE 9 TERM AND TERMINATION	35
9.1 Term.....	35
9.2 Termination of Agreement	36
9.3 Effect of Termination	36
ARTICLE 10 DEFAULT AND REMEDIES	37
10.1 Nalcor Events of Default	37
10.2 Remedies upon Nalcor Event of Default.....	37
10.3 Emera Events of Default	38
10.4 Remedies upon Emera Event of Default.....	38
10.5 NSPI Events of Default	39
10.6 Remedies upon NSPI Event of Default.....	39
10.7 Equitable Relief.....	40
10.8 No Cross Default.....	40
ARTICLE 11 FORCE MAJEURE	40
11.1 Effect of Invoking Force Majeure and Notice	40
ARTICLE 12 LIABILITY AND INDEMNITY	41
12.1 Nalcor Indemnity	41
12.2 Emera Indemnity	41
12.3 NSPI Indemnity.....	42
12.4 Own Property Damage	42
12.5 Indemnification Procedure	42
12.6 Insurer Approval	44
ARTICLE 13 LIMITATION OF DAMAGES	45
13.1 Limitations and Indemnities Effective Regardless of Cause of Damages	45
13.2 No Consequential Loss	45
13.3 Insurance Proceeds	45
ARTICLE 14 CONFIDENTIALITY	45
14.1 Confidentiality and Restricted Use	45

14.2	Acknowledgments	47
14.3	Reliance on Certain Confidential Information	48
14.4	Disclosures Required by Law	48
14.5	NSPI Confidentiality Obligations.....	50
14.6	UARB Confidentiality	50
14.7	NSPI Affiliate Transactions	51
14.8	Restrictions on Emera Access to Nalcor Confidential Information	51
14.9	Disclosure of Agreement.....	52
ARTICLE 15 ASSIGNMENT AND CHANGE OF CONTROL.....		52
15.1	Nalcor Assignment Rights.....	52
15.2	Emera Assignment Rights	53
15.3	Assignment by NSPI.....	53
15.4	Assignment – Tax Requirements	54
ARTICLE 16 DISPUTE RESOLUTION		54
16.1	General	54
16.2	Procedure for Inter-Party Claims	54
ARTICLE 17 REPRESENTATIONS AND WARRANTIES.....		55
17.1	Nalcor Representations and Warranties	55
17.2	Emera Representations and Warranties.....	56
17.3	NSPI Representations and Warranties.....	57
ARTICLE 18 MISCELLANEOUS PROVISIONS		58
18.1	Notices.....	58
18.2	Prior Agreements.....	59
18.3	Relationship with Formal Agreements	59
18.4	Counterparts.....	60
18.5	Expenses of Parties.....	60
18.6	Announcements	60
18.7	Relationship of the Parties	60
18.8	Further Assurances.....	60
18.9	Severability	60
18.10	Time of the Essence.....	61
18.11	Amendments	61
18.12	No Waiver	61
18.13	No Third Party Beneficiaries	61
18.14	Survival	61
18.15	Waiver of Sovereign Immunity.....	61
18.16	Successors and Assigns.....	62
18.17	Capacity of Nalcor	62

Schedules:

- Schedule 1 - Scheduling Protocol
- Schedule 2 - Nalcor Master Agreement
- Schedule 3 - Nalcor Master Agreement Modifications
- Schedule 4 - Description of Nalcor Progress Report
- Schedule 5 - Form of Balancing Service Agreement
- Schedule 6 - Form of Assignment Agreement
- Schedule 7 - Dispute Resolution Procedure

THIS ENERGY ACCESS AGREEMENT is made effective the 13th day of April, 2015 (the “**Effective Date**”).

B E T W E E N:

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being Chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown (“**Nalcor**”)

- and -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia (“**Emera**”)

- and -

NOVA SCOTIA POWER INCORPORATED, a company incorporated under the laws of the Province of Nova Scotia (“**NSPI**”)

WHEREAS:

- A. NSPML filed an application with the UARB on January 28, 2013, under the *Maritime Link Act*, S.N.S. 2012, c. 9 and the *Maritime Link Cost Recovery Process Regulations* (N.S. Reg. 189/2012);
- B. the UARB’s decision dated July 22, 2013 directed as a condition to its approval of the Maritime Link that NSPML obtain from Nalcor the right to access Nalcor market-priced Energy when needed to economically serve NSPI and its ratepayers, or provide some other arrangement to ensure access to market-priced Energy;
- C. on November 29, 2013, the UARB issued a supplemental decision confirming that the market-priced Energy access arrangements provided for in the Initial EAA satisfy the condition of approval concerning market-priced Energy access and that the Maritime Link was therefore approved in accordance with its decisions of July 22, 2013 and November 29, 2013;
- D. the Initial EAA contemplated that a definitive Energy Access Agreement would be entered into incorporating the commercial terms set forth in the Initial EAA as well as other legal provisions as are customary and appropriate for transactions of the nature provided for by the Initial EAA; and
- E. the Parties now wish to confirm the terms and conditions under which they will enter into a definitive Energy Access Agreement.

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and, subject to **Section 1.2(h)**, in the Schedules:

“ATIPPA” has the meaning set forth in **Section 14.4(a)**;

“Affiliate” means, with respect to any Person, any other Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such Person; provided however that the NL Crown shall be deemed not to be an Affiliate of Nalcor;

“Agreement” means this agreement including all Schedules, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“Annual Variance Amount” has the meaning set forth in **Section 5.2**;

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of and the terms of all judgments, orders and decrees issued by any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Authorized Purpose” has the meaning set forth in **Section 14.1(a)**;

“Available Energy” means Nalcor Generated Energy, exclusive of New Generation Development Energy, that is excess to the Energy quantities required by Nalcor and its Affiliates to satisfy NL Native Load and the Nova Scotia Block;

“Available Transmission Path” means available (but not necessarily contracted-for) Transmission Rights that would be sufficient to allow Nalcor or Emera, as applicable, to avail of an identified market opportunity for the sale of Energy, considering the applicable Energy quantity and the intended points of receipt and delivery associated with the given

transaction, provided that an Available Transmission Path may be comprised of either Sunk Transmission, or other available Transmission Rights that have been posted on an Open Access Same-Time Information System or comparable system by the applicable transmission provider, or any combination of the two and provided that Nalcor or Emera, as applicable, shall provide, as part of any bid submitted to NSPI pursuant to **Sections 2.3 or 5.5(d)** that references an alternative market opportunity, reasonable documentary evidence to establish an Available Transmission Path, at the time of and for the duration of the market opportunity, as of the date of such bid submission;

“Balancing Services Agreement” has the meaning set forth in **Section 5.8(a)**;

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL, or in Halifax Regional Municipality, NS;

“CPI” means the consumer price index for “All Items” published or established by Statistics Canada (or its successor) for any relevant calendar year in relation to NL;

“Canadian GAAP” means generally accepted accounting principles as defined by the Canadian Institute of Chartered Accountants or its successors, as amended or replaced by international financial reporting standards or as otherwise amended from time to time;

“Capacity” means the capability to provide electrical power, measured and expressed in MW;

“Claiming Party” has the meaning set forth in **Section 16.2(a)**;

“Claims” means any and all Losses, claims, actions, causes of action, demands, fees (including all legal and other professional fees and disbursements, court costs and experts’ fees), levies, Taxes, judgments, fines, charges, deficiencies, interest, penalties and amounts paid in settlement, whether arising in equity, at common law, by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind or character;

“Commitment” has the meaning set forth in **Section 4.1(a)**;

“Confidential Information” means:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of the Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analyses, tests, specifications, charts, plans, drawings, ideas, schemes, correspondence, communications, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operations, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing

information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party, its Affiliates, this Agreement or the transactions contemplated hereunder; and

- (b) all summaries, notes, analyses, compilations, studies and other records prepared by the Receiving Party that contain or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in the foregoing paragraph (a);

“Confirmation” has the meaning set forth in the Nalcor Master Agreement;

“Contract Year” means, during the Term, each period from September 1 to August 31, inclusive, following Full Commercial Operation;

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have correlative meanings);

“Day-Ahead Price” has the meaning set forth in the ISO-NE Tariff;

“Delivery Point” means the point of interconnection of the Maritime Link and the NS Transmission System at the 345 kV side of the HVdc converter transformers at Woodbine, NS;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of another Party;

“Dispute” means any dispute, controversy or claim of any kind whatsoever arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Applicable Law that affects this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof;

“Dispute Resolution Procedure” has the meaning set forth in **Article 16**;

“EEI Master Agreement” means the Emera Master Agreement or the Nalcor Master Agreement, as required by the context;

“Effective Date” has the meaning set forth in the commencement of this Agreement;

“Emera” has the meaning set forth in the preamble to this Agreement and includes Emera’s successors and permitted assigns;

“Emera Affiliate Assignee” means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 15.2**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

“Emera Default” has the meaning set forth in **Section 10.3**;

“Emera Group” has the meaning set forth in **Section 12.1(a)**;

“Emera Hydrology Event” means the occurrence of actual hydrologic conditions that have resulted or will result in less Stored Energy being available to Emera or its Affiliates than was forecasted by Emera at the time it prepared the applicable Variance Forecast. In respect of an inability by Emera to bid Energy in response to a NSPI Solicitation, the applicable Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of such NSPI Solicitation. In respect of an inability of Emera to deliver Energy to NSPI, the applicable Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of the NSPI Solicitation pursuant to which the delivery obligation arose;

“Emera Master Agreement” has the meaning set forth in **Section 5.6(b)**;

“Emera Rights” has the meaning set forth in **Section 15.2(a)**;

“Emera Variance Amount” has the meaning set forth in **Section 5.5(a)(i)**;

“Encumbrance” means any security interest, mortgage, charge, pledge, hypothec, lien, restriction, option, adverse claim, right of others or other encumbrance of any kind, but does not include inchoate statutory liens or trusts;

“Energy” means electrical energy measured and expressed in MWh, GWh or TWh;

“Energy and Capacity Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“Force Majeure” means an event, condition or circumstance (each, an **“event”**) beyond the reasonable control of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or

other fire or other cause of air pollution, an epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;

- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or other inadvertent action or inability to act causing material physical damage to, or materially impairing the operation of, or access to, any of the Labrador-Island Link, Labrador Transmission Assets, the Island Interconnected System, any of the generating facilities used to produce Nalcor Generated Energy, or the Maritime Link or any machinery or equipment comprising part of or used in connection with any of such facilities;
- (e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force, or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the delivery of the Nalcor Supplied Energy, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization;
- (f) where claimed by Nalcor, the inability of the Maritime Link to receive, transmit or deliver Energy under the terms of the Maritime Link Transmission Service Agreements; and
- (g) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of the Nalcor Supplied Energy that is required by the applicable System Operator for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices,

but the following shall not be considered a Force Majeure event:

- (i) lack of finances or changes in economic circumstances of a Party;
- (ii) if the event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure;
- (iii) an event described by subsections (a) or (b) of the definition of “Forgivable Event”;
- (iv) an event that results from a failure by a claiming Party to apply applicable NERC or NPCC standards relating to HVdc interconnections between bulk energy systems as required by an Authorized Authority; or
- (v) any delay in the settlement of any Dispute;

“Forced Outage” means the removal from service availability of a generating unit, transmission line or other facility due to emergency reasons or due to the unanticipated failure of such equipment, other than by reason of the failure of the Party claiming the Forced Outage, or an Affiliate of that Party, to comply with Good Utility Practice in operating the applicable facility or facilities, provided that for the purpose of the interpretation and application of this definition only, Emera and NSPI shall be deemed not to be Affiliates;

“Forgivable Event” means any of the following, as applicable:

- (a) a requirement by Nalcor or an Affiliate of Nalcor to utilize Energy in order to satisfy NL Native Load;
- (b) a Hydrology Event;
- (c) Force Majeure;
- (d) a Safety Event;
- (e) a Forced Outage; or
- (f) an action required to be taken by a Party to comply with Good Utility Practice;

“Formal Agreements” means the following agreements dated July 31, 2012 between Nalcor and Emera:

- (a) Maritime Link - Joint Development Agreement;
- (b) Energy and Capacity Agreement;
- (c) Maritime Link (Nalcor) Transmission Service Agreement;
- (d) Maritime Link (Emera) Transmission Service Agreement;
- (e) Nova Scotia Transmission Utilization Agreement;
- (f) New Brunswick Transmission Utilization Agreement;
- (g) MEPCO Transmission Rights Agreement;
- (h) Interconnection Operators Agreement;
- (i) Joint Operations Agreement;
- (j) Newfoundland and Labrador Development Agreement;
- (k) Labrador-Island Link Limited Partnership Agreement;
- (l) Inter-Provincial Agreement; and

(m) Supplemental Agreement;

“Full Commercial Operation” means the date following the day upon which the latest of the following events occurs:

- (a) the ML Commercial Operation Date;
- (b) the completion of the start-up and testing activities required to demonstrate that four generating units at the Muskrat Falls Plant are ready to reliably operate in accordance with their design criteria;
- (c) the completion of the start-up and testing activities required to demonstrate that the Labrador-Island Link is ready to reliably operate in accordance with its design criteria; and
- (d) the completion of the start-up and testing activities required to demonstrate that the Labrador Transmission Assets are ready to reliably operate in accordance with their design criteria;

“GHG Credits” means greenhouse gas credits or allowances, including all attributes associated with renewable energy, associated with the displacement of generation from greenhouse gas emitting facilities;

“GWh” means gigawatt hours;

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods, or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Hydrology Event” means a Nalcor Hydrology Event or an Emera Hydrology Event;

“ISO-NE” means ISO New England Inc. or any successor system operator with responsibility for operating the bulk energy transmission system in New England;

“ISO-NE Tariff” means the Transmission, Markets and Services Tariff issued by the ISO-NE, as it may be amended, restated, reissued or replaced from time to time;

“Income Tax Act” means the *Income Tax Act* (Canada);

“Incremental Cost Rate” means the rate in dollars per MWh that is equal to, as applicable, (a) NSPI's incremental incurred cost associated with generating or purchasing the MWh of Energy not delivered by Nalcor during the corresponding hours in which Nalcor has postponed the delivery of Energy pursuant to **Section 3.6**, or (b) NSPI's avoided cost associated with avoiding a requirement to generate or purchase the MWh of Energy subsequently delivered as Redeliverable Energy pursuant to **Section 3.6**, in both cases as calculated by NSPI in accordance with a methodology that is accepted at such time by the UARB as an appropriate methodology for determining NSPI's hourly incremental cost per MWh to generate or purchase Energy, taking into account, to the extent applicable in the given circumstances and without duplication, items such as transmission tariff charges and other fees incurred, fuel costs, variable capital costs, environmental compliance costs, line losses, and other variable operating costs; provided, however, that if at any time no such methodology is in use, a substitute methodology shall be agreed to by Nalcor and NSPI, or failing such agreement, the substitute methodology shall be resolved by means of a Specified Dispute. **Section 1.2(m)** applies to the foregoing provision;

“Indemnified Party” has the meaning set forth in **Section 12.5(a)**;

“Indemnitor” has the meaning set forth in **Section 12.5(a)**;

“Initial EAA” means the agreement dated October 20, 2013 between Nalcor, Emera and NSPI relating to the provision of access to market-priced Energy by Nalcor to NSPI;

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding-up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a

bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

"Island Interconnected System" means the bulk energy transmission system on the island portion of NL owned and operated by NLH but, for greater certainty, excluding any part of the Labrador-Island Link or the Maritime Link;

"Knowledge" means, in the case of a given Party, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could

reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Labrador-Island Link” means the transmission facilities to be constructed by or on behalf of the Labrador-Island Link Limited Partnership from central Labrador to Soldiers Pond, NL;

“Labrador-Island Link Limited Partnership” has the meaning set forth in the NLDA;

“Labrador Transmission Assets” means the transmission facilities to be constructed by an Affiliate of Nalcor between the Muskrat Falls Plant and the generating plant located at Churchill Falls, NL;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“Lender Recipient” has the meaning set forth in **Section 14.1(c)**;

“Losses” means any and all losses (other than losses of Energy normally incurred in the transmission of Energy), damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

“ML Commercial Operation Date” has the meaning of “Commercial Operation Date” set forth in the ML-JDA;

“MW” means megawatt;

“MWh” means MW hours;

“Maritime Link” or **“ML”** means the transmission facilities to be constructed between the Island Interconnected System and the NS Transmission System in accordance with the Maritime Link-Joint Development Agreement;

“Maritime Link (Emera) Transmission Service Agreement” means the agreement dated July 31, 2012 between Emera and an Affiliate of Emera relating to Transmission Rights of an Affiliate of Emera on the ML in respect of the Nova Scotia Block;

“Maritime Link-Joint Development Agreement” or **“ML-JDA”** means the agreement dated July 31, 2012 between Nalcor and Emera relating to the development of the Maritime Link;

“Maritime Link (Nalcor) Transmission Service Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera relating to Transmission Rights of Nalcor on the ML other than in respect of the Nova Scotia Block;

“Maritime Link Transmission Service Agreements” means the Maritime Link (Emera) Transmission Service Agreement and the Maritime Link (Nalcor) Transmission Service Agreement;

“Marketing Personnel” means a natural Person who, individually or on behalf of any other Person, sells or purchases for consumption or resale Capacity, Energy, Energy derivatives or ancillary services in the wholesale power markets, and includes any natural Person who conducts such transactions on behalf of transmission service customers, power exchanges, transmission owners, load serving entities, loads, holders of Energy derivatives, generators and other power suppliers and their designated agents;

“Muskrat Falls Plant” means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be constructed by an Affiliate of Nalcor;

“NERC” means the North American Electric Reliability Corporation or its successor organization;

“NL” means the Province of Newfoundland and Labrador;

“NL Crown” means Her Majesty the Queen in Right of NL;

“NL Native Load” means the cumulative electricity consumption within NL by customers of NLH, Nalcor and the Affiliates of NLH and Nalcor and their successors and assigns, plus associated Transmission Losses and distribution losses;

“NLH” means Newfoundland and Labrador Hydro, a wholly-owned subsidiary of Nalcor, and includes its successors;

“NPCC” means the Northeast Power Coordinating Council or its successor organization;

“NS” means the Province of Nova Scotia;

“NS OATT” means the NSPI Open Access Transmission Tariff approved by the UARB as it may be amended, restated, reissued or replaced from time to time;

“NS Transmission System” means the bulk energy transmission system in NS;

“NS Transmission Utilization Agreement” means the agreement dated July 31, 2012 between Emera and Nalcor relating to the provision of Transmission Rights through NS by Emera to Nalcor;

“NSPI” has the meaning set forth in the preamble to this Agreement and includes NSPI’s successors and permitted assigns;

“NSPI Default” has the meaning set forth in **Section 10.5**;

“NSPI Group” has the meaning set forth in **Section 12.1(b)**;

“NSPI Solicitation” has the meaning set forth in **Section 2.2**;

“NSPML” means NSP Maritime Link Incorporated, a corporation incorporated under the laws of NL and includes its successors;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“Nalcor Affiliate Assignee” means an Affiliate of Nalcor to which all or any portion of the Nalcor Rights have been assigned in accordance with **Section 15.1**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

“Nalcor Bid” has the meaning set forth in **Section 2.3**;

“Nalcor Bid Energy” means the aggregate amount of Energy in respect of a specific Contract Year that is offered for sale by Nalcor to NSPI pursuant to **Section 2.3**;

“Nalcor Default” has the meaning set forth in **Section 10.1**;

“Nalcor Forecast” has the meaning set forth in **Section 2.1**;

“Nalcor Generated Energy” means Energy from all interconnected generation facilities located within NL, whether in full or partial operation, that are now or hereafter:

- (a) directly or indirectly owned by or contracted to Nalcor or any Affiliate of Nalcor or its successors or assigns, or
- (b) directly or indirectly operated or controlled by Nalcor or any Affiliate of Nalcor or its successors or assigns for the purpose of generating Energy to satisfy NL Native Load.

Notwithstanding the foregoing, Nalcor Generated Energy excludes (i) Energy from the Upper Churchill hydro-electric project that is required to be delivered to Hydro Quebec under existing contract, and (ii) any Energy from a facility described in paragraph (b) of this definition, to the extent that a third party is contractually entitled to, and does, dispose of such Energy for consumption other than by NL Native Load;

“Nalcor Group” has the meaning set forth in **Section 12.2**;

“Nalcor Hydrology Event” means the occurrence of actual hydrologic conditions that have resulted or will result in less Stored Energy being available to Nalcor or its Affiliates than was forecasted by Nalcor at the time it prepared the applicable Nalcor Forecast or Variance Forecast. In respect of an inability by Nalcor to bid Energy in response to a NSPI Solicitation, the applicable Nalcor Forecast or Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of such NSPI Solicitation. In respect of an inability of Nalcor to deliver Energy to NSPI, the applicable Nalcor Forecast or Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of the NSPI Solicitation pursuant to which the delivery obligation arose;

“Nalcor Master Agreement” has the meaning set forth in **Section 3.1** and is based on the Edison Electrical Institute standard form Master Power Purchase & Sale Agreement;

“Nalcor Rights” has the meaning set forth in **Section 15.1(a)**;

“Nalcor Supplied Energy” means Energy sold and delivered by Nalcor to NSPI pursuant to this Agreement. For greater certainty, Nalcor Supplied Energy includes Energy supplied in respect of any Nalcor Variance Amount and is in addition to, and separate from, the Nova Scotia Block;

“Nalcor Variance Amount” has the meaning set forth in **Section 5.5(a)(iii)**;

“New Generation Development Energy” means any Nalcor Generated Energy that is generated from a generating facility (other than the Muskrat Falls Plant) built or acquired after October 20, 2013 wholly or partially for the purposes of, and which is committed under, a contract for the supply of Energy by Nalcor or any Affiliate of Nalcor or its successors or assigns, to a customer outside of NL. For greater certainty, Energy from such a generating facility that is not committed to such a contract will not be considered New Generation Development Energy and will be included in Available Energy;

“Newfoundland and Labrador Development Agreement” or **“NLDA”** means the agreement dated July 31, 2012 among Nalcor, Emera and other parties relating, among other things, to the development of the Muskrat Falls Plant, the Labrador-Island Link and the Labrador Transmission Assets;

“Notice” means a communication required or contemplated to be given by any Party to another under this Agreement, which communication shall be given in accordance with **Section 18.1**;

“Nova Scotia Block” has the meaning set forth in the Energy and Capacity Agreement;

“Off-Peak Hours” means the hours of a day that are not Peak Hours;

“Off-Peak Period” means the aggregation of all Off-Peak Hours during a given calendar month;

“Original Date of Delivery” means the date upon which Nalcor originally committed to deliver a specific quantity of Energy to NSPI pursuant to this Agreement prior to any postponement of such Energy delivery pursuant to **Section 3.6**;

“PPA” has the meaning set forth in **Section 5.7(b)(i)**;

“Parties” means the parties to this Agreement and **“Party”** means one of them;

“Peak Hours” means the hours of a day that are deemed to be peak hours by the ISO-NE operations manuals, as such manuals may be amended from time to time;

“Peak Period” means the aggregation of all Peak Hours during a given calendar month;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Prime Rate” means the variable rate of interest per annum expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by The Bank of Nova Scotia, or any successor thereto, as its reference rate for the determination of interest rates that it will charge on commercial loans in Canadian dollars made in Canada;

“Progress Report” has the meaning set forth in **Section 5.1**;

“Receiving Party” means a Party or an Affiliate of a Party that receives Confidential Information from another Party or an Affiliate of another Party;

“Recipient Party” has the meaning set forth in **Section 16.2(a)**;

“Redeliverable Energy” means Energy in respect of which Nalcor has postponed delivery pursuant to **Section 3.6**;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL, when referring to the Regular Business Hours of Nalcor, and 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS, when referring to the Regular Business Hours of Emera or NSPI;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Repairs” means repairs, changes, renewals, improvements or replacements;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party and Affiliates of a Party;

“Safety Event” means an event which causes a Party to suspend the performance of an obligation hereunder for the purpose of safeguarding life or property by making Repairs to its facilities in accordance with Good Utility Practice;

“Schedule”, when used as a verb, means to take all acts necessary to schedule, or cause to be scheduled, the delivery of Energy to an applicable point of delivery in accordance with this Agreement;

“Scheduling Protocol” means the scheduling protocol attached as **Schedule 1**;

“Settled Forecast” has the meaning set forth in **Section 5.1**;

“Specified Dispute” has the meaning set forth in the Dispute Resolution Procedure;

“Stored Energy” means, in respect of Nalcor, the potential to generate Energy that is represented by an incremental increase in the volume of water stored in any reservoirs owned or operated by, or available to Nalcor or its Affiliates, including the reservoir associated with the hydroelectric generation facilities at Churchill Falls on the Churchill River in NL, and in respect of Emera, means the potential to generate Energy that is represented

by an incremental increase in the volume of water stored in any reservoirs owned or operated by, or available to Emera or its Affiliates;

“Sunk Transmission” means Nalcor’s or Emera’s or their respective Affiliates’ long-term transmission service reservations, as the case may be, in effect prior to the applicable NSPI Solicitation;

“System Operator” means, as applicable, the NSPI system operator, a functionally separate division of NSPI responsible for the safe and reliable operation of the electricity system in NS, or any successor performing this role, in respect of NS, and the system operations department of NLH responsible for the safe and reliable operation of the electricity system in NL, or a functionally separate division of NLH, or any successor performing this role, as applicable, in respect of NL;

“TWh” means terawatt hours;

“Tariff Charges” means any charges arising pursuant to a tariff or other schedule of fees in respect of electricity transmission services;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Term” has the meaning set forth in **Section 9.1**;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

“Third Party Claim” means a Claim referred to in **Section 12.1, 12.2 or 12.3**;

“Trade Secret” means information that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;

“Transaction” has the meaning set forth in the applicable EEI Master Agreement;

“Transmission Losses” means losses of Energy normally incurred in the transmission of Energy;

“Transmission Rights” means contractual rights to receive transmission service on specifically identified transmission infrastructure and transmission congestion rights;

“Transmission System” means the Labrador Transmission Assets, the Labrador-Island Link, the Island Interconnected System and the Maritime Link;

“UARB” means the Utility and Review Board body established by NS pursuant to the *Utility and Review Board Act* (Nova Scotia);

“US GAAP” means generally accepted accounting principles as defined by the Financial Accounting Standards Board or its successors, as amended from time to time;

“Variance” has the meaning set forth in **Section 5.2**;

“Variance Forecasts” has the meaning set forth in **Section 5.5(c)**;

“Variance Trigger Date” has the meaning set forth in **Section 5.2**; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number or a letter or both refer to the specified article, section, schedule or appendix of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.

- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with US GAAP except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, Emera shall use commercially reasonable efforts to provide Nalcor with all of the information it needs to prepare Nalcor’s accounting records in accordance with Canadian GAAP.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced therein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.

- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “approved”, “decided” or “determined” by a Party, or requires a Party’s or its Representative’s “consent”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Wherever a provision of this Agreement states that **Section 1.2(m)** applies, in respect of the matters referred to in that provision:
 - (i) each Party shall use commercially reasonable efforts to reach agreement with the other Party or Parties, as applicable, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing;
 - (ii) any failure, inability or refusal of a Party or Parties to reach agreement shall constitute a Dispute and may be submitted by any applicable Party for resolution pursuant to the Dispute Resolution Procedure;
 - (iii) such Dispute shall be resolved as a Specified Dispute if so specified in such provision; and
 - (iv) if such Dispute is not a Specified Dispute, the applicable Parties will be deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve the Dispute by arbitration.

1.3 Conflicts between Parts of Agreement

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any document delivered pursuant to this Agreement, or that of either EEI Master Agreement, the provision of the body of this Agreement shall prevail. Notwithstanding the preceding sentence, if there is any conflict or inconsistency among the provisions governing a Transaction pursuant to either EEI Master Agreement, the conflict or inconsistency will be resolved first in favour of the terms of such Transaction, then in favour of the provisions of the applicable EEI Master Agreement and lastly in favour of this Agreement.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 16**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to

the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

The following are the Schedules attached to and incorporated by reference in this Agreement, which are deemed to be part hereof:

Schedule 1	-	Scheduling Protocol
Schedule 2	-	Nalcor Master Agreement
Schedule 3	-	Nalcor Master Agreement Modifications
Schedule 4	-	Description of Nalcor Progress Report
Schedule 5	-	Form of Balancing Service Agreement
Schedule 6	-	Form of Assignment Agreement
Schedule 7	-	Dispute Resolution Procedure

ARTICLE 2 NALCOR FORECASTS AND NSPI SOLICITATIONS

2.1 Nalcor Forecasts

- (a) In accordance with the schedule set forth in **Section 2.1(b)**, Nalcor shall provide NSPI with good faith forecasts that specify the quantity of Available Energy that is forecasted to be available for sale by Nalcor to NSPI during the following 24 calendar months (each such forecast being a “**Nalcor Forecast**”). Each Nalcor Forecast will:
 - (i) forecast a maximum of 1.8 TWh of Available Energy in respect of any Contract Year;
 - (ii) forecast quantities of Available Energy that are capable of being delivered to the Delivery Point, with regard to the capability of the Transmission System and the generating facilities used to produce Nalcor Generated Energy and provided that, for the purpose of the Nalcor Forecast only, the NS Transmission System will be deemed to be capable of receiving, for consumption within NS, at least 300 MW at the Delivery Point at all applicable times, inclusive of the Nova Scotia Block and any Energy exchanged pursuant to the Balancing Services Agreement; and
 - (iii) for each applicable calendar month, specify the total quantities of Available Energy that are forecast to be available during Peak Hours and Off-Peak Hours.
- (b) The Nalcor Forecasts shall be provided by Nalcor to NSPI as follows:
 - (i) the first Nalcor Forecast shall be provided on March 1 of the calendar year in which Nalcor expects that the first Contract Year will commence, acting

reasonably and in consideration of the anticipated date of Full Commercial Operation;

- (ii) subsequent Nalcor Forecasts shall be provided on or before the last Business Day preceding the start of each ensuing calendar month; and
- (iii) the last Nalcor Forecast shall be provided on or before the last Business Day preceding June 1, 2040.

2.2 NSPI Solicitations

By no later than June 15 preceding each Contract Year, NSPI may, at its option, issue a competitive market solicitation for the supply of Energy to it during such Contract Year (each, a “**NSPI Solicitation**”). On the date of issuance of each NSPI Solicitation, NSPI shall provide Notice to Nalcor that a NSPI Solicitation has been issued, including the particulars of how the documentation comprising the NSPI Solicitation may be accessed. The NSPI Solicitation will specify the total quantities of Energy being sought by NSPI in respect of the Peak Hours and Off-Peak Hours of each month of the Contract Year covered by the NSPI Solicitation, and will accommodate the pricing of Energy offers on the bases provided for in **Section 2.4**. The NSPI Solicitation will include all such additional details as are customary or reasonably required for the conduct of a solicitation of such nature. Nalcor and any other respondents to the NSPI Solicitation, including Emera, if applicable, will be provided with at least 30 days within which to submit their responses to NSPI. There will be only one NSPI Solicitation in respect of any Contract Year. Nothing in this Agreement shall obligate NSPI to issue a NSPI Solicitation.

2.3 Nalcor Bid

If a NSPI Solicitation requests offers for the supply of Energy during a Peak Period or an Off-Peak Period, or both, in respect of one or more calendar months in which the immediately preceding Nalcor Forecast has forecasted the availability of Available Energy, then Nalcor shall respond in good faith to such NSPI Solicitation in accordance with the following (each such response being a “**Nalcor Bid**”):

- (a) Nalcor shall submit a Nalcor Bid within 30 days following its receipt of the NSPI Solicitation;
- (b) the Nalcor Bid will offer to supply Energy to NSPI in respect of the Peak Period and the Off-Peak Period of each calendar month of the applicable Contract Year in quantities that are at least equal to the lesser of:
 - (i) the quantities of Energy requested by the NSPI Solicitation for the Peak Period and Off-Peak Period of such month; and
 - (ii) the quantities of Energy forecasted to be available, if any, by the most recent Nalcor Forecast for the Peak Period and the Off-Peak Period of such month;

- (c) the Nalcor Bid will specify the quantities of Energy, if any, in MWh, that are being offered to NSPI for the Peak Period and the Off-Peak Period of each calendar month of the Contract Year, and will identify the prices or pricing mechanism, on a dollar per MWh basis, for specific Energy quantities during each such Peak Period and Off-Peak Period, and the pricing of all Energy offered by the Nalcor Bid shall comply with **Section 2.4**; and
- (d) Nalcor's obligation to bid the Energy quantities provided for by **Sections 2.3(b)** will be reduced to the extent that Nalcor is unable to fulfil such obligation due to a Forgivable Event.

2.4 Nalcor Bid Price

In pricing the Nalcor Bid Energy offered pursuant to **Section 2.3**, Nalcor shall consider, in respect of the applicable time periods covered by the Nalcor Bid, NSPI's market alternatives for Energy procurement and Nalcor's sales opportunities in other accessible north-eastern electricity markets available to Nalcor at any time. The prices offered by Nalcor in each Nalcor Bid will be the price for the Energy delivered to the Delivery Point and will not exceed the greater of:

- (a) the hourly settled Day-Ahead Price at the ISO-NE Mass Hub node (described as "4000_:_H.INTERNAL_HUB" by the ISO-NE) for the hour of delivery. For greater certainty, this price will be the Day-Ahead Price, and will not be reduced by any real or implied market fees, Tariff Charges, Transmission Losses or other charges; and
- (b) the price associated with any alternative market opportunities identifiable by Nalcor at the time of the Nalcor Bid that are available to Nalcor at any time within one year following the submission of the Nalcor Bid into the NSPI Solicitation, to the extent that Nalcor can demonstrate:
 - (i) a liquid trading node with associated published forward pricing;
 - (ii) an Available Transmission Path;
 - (iii) available hydraulic storage capacity, sufficient to allow Nalcor or its Affiliates to store the Energy that is subject to the pricing mechanism set forth in this **Section 2.4(b)** as Stored Energy until the time of such alternative market opportunity; and
 - (iv) forecasted available generation Capacity, sufficient to allow Nalcor or its Affiliates to convert the Stored Energy referred to in **Section 2.4(b)(iii)** to Energy at the time of such alternative market opportunity,

less incremental Tariff Charges, Transmission Losses and other charges that would be incurred to deliver Energy comprising Nalcor Bid Energy to such market, and for greater certainty, such price will not reflect a deduction for any costs for Sunk Transmission.

The pricing mechanisms provided for by **Sections 2.4(a) and (b)** will be in reference to pricing that is available for a non-firm, Energy-only product in respect of which a purchaser receives no GHG Credits. Nalcor Bids that offer pricing that is compliant with this **Section 2.4** will be deemed to be in good faith with respect to price.

2.5 Acknowledgement of NSPI Acceptance

Within 15 days following the expiry of the minimum 30 day period referred to in **Section 2.2**, NSPI shall, by Notice, either:

- (a) advise Nalcor that it does not accept the Energy supply offers set out in the Nalcor Bid, or
- (b) provide an acknowledgement of acceptance to Nalcor specifying the portions of the Energy offered by the Nalcor Bid that NSPI intends to accept (which, for clarity, may be the total of the Energy offered by the Nalcor Bid). Such acknowledgement will clearly identify the specific Peak Periods and Off-Peak Periods in respect of which NSPI has accepted Nalcor's Energy supply offers, the MWh quantities associated with each such period, and will provide such additional details as may reasonably be required by Nalcor given the nature of the intended transactions.

Nothing in this Agreement obligates NSPI to accept any Energy supply offer set forth in a Nalcor Bid.

2.6 Purchase and Sale Obligation

Upon the provision of an acknowledgment by NSPI to Nalcor pursuant to **Section 2.5(b)**, and subject to **Section 3.6**, Nalcor shall be obligated to sell and deliver to NSPI, and NSPI shall be obligated to purchase and receive from Nalcor, the quantities of Nalcor Bid Energy specifically accepted by NSPI's acknowledgement, provided that Nalcor's obligation to sell and deliver such Energy will be reduced to the extent that Nalcor is unable to fulfil such obligation due to a Forgivable Event.

2.7 NSPI Third Party Solicitations

Nothing in this Agreement will prevent NSPI from issuing solicitations and entering into contracts with third parties instead of, or in addition to, issuing NSPI Solicitations. In conducting any such solicitations, NSPI will not be restrained from requesting Energy from any source or with any particular characteristics. For greater certainty, Nalcor will not be obliged to respond to any such alternate solicitations and will only be required to respond to a NSPI Solicitation that is compliant with the provisions of this Agreement.

2.8 Nalcor Third Party Transactions

Nothing in this Agreement will prohibit Nalcor or any Affiliate of Nalcor from selling to a third party or otherwise disposing of any Available Energy in respect of a Contract Year that: (a) Nalcor is not required to offer to NSPI pursuant to a Nalcor Bid in accordance with **Section 2.3**, or (b)

has been the subject of such a Nalcor Bid but has not been accepted by NSPI pursuant to, and within the time-frame contemplated by, **Section 2.5**.

ARTICLE 3

PROVISIONS GOVERNING ENERGY TRANSACTIONS

3.1 Master Power Sale and Purchase Agreement

The Master Power Purchase & Sale Agreement, entered into by Nalcor and NSPI on the Effective Date and attached as **Schedule 2** (the “**Nalcor Master Agreement**”), as amended by **Schedule 3**, will govern all transactions between those Parties for the purchase, sale and delivery of Nalcor Supplied Energy in respect of which a Transaction has been entered into. Nalcor and NSPI will be deemed to have entered into a Transaction pursuant to the Nalcor Master Agreement in respect of each specific delivery of Energy at the time that such delivery is confirmed on a day-ahead basis in accordance with the Scheduling Protocol.

3.2 Purchase and Sale at the Delivery Point

Nalcor shall sell and deliver, or cause to be delivered, to NSPI, and NSPI shall purchase and receive from Nalcor, all Nalcor Supplied Energy at the Delivery Point in accordance with this Agreement, the Nalcor Master Agreement (including applicable Confirmations) and the Scheduling Protocol. Title and ownership relating to all Nalcor Supplied Energy will pass from Nalcor to NSPI at the Delivery Point.

3.3 Energy-Only Product

Nalcor Supplied Energy will be an Energy-only product, and Nalcor will retain all rights and value associated with such Energy in respect of associated Capacity and GHG Credits.

3.4 End Use Consumption Only

NSPI shall utilize all Nalcor Supplied Energy for the purpose of end-use consumption by its customers within NS only, provided that NSPI will have the limited right to resell Nalcor Supplied Energy during periods in which such Energy is surplus to NSPI’s requirements due to such variations in NSPI’s load or generation that are identified by NSPI subsequent to the acceptance by NSPI of an applicable Nalcor Bid pursuant to **Section 2.5(b)**. For greater certainty, Nalcor and NSPI agree that it is the intention of those Parties that NSPI will not be a market reseller of Nalcor Supplied Energy, except in the circumstances identified above.

3.5 Scheduling of Energy Deliveries

The sale and delivery by Nalcor to NSPI of Nalcor Supplied Energy pursuant to this Agreement, including any Redeliverable Energy, will be Scheduled in accordance with the Scheduling Protocol. Nalcor and NSPI shall ensure that all Energy that Nalcor is obligated to sell and that NSPI is obligated to purchase pursuant to **Section 2.6** is Scheduled and delivered in accordance with the Scheduling Protocol.

3.6 Rescheduled Delivery

Nalcor may, at its option and in its sole discretion, postpone and reschedule the delivery of Energy that it is otherwise obligated to deliver to NSPI pursuant to this Agreement in accordance with the following:

- (a) prior to the day-ahead confirmation of the relevant Energy delivery pursuant to the Scheduling Protocol, Nalcor shall advise NSPI of: (i) the specified quantities of Energy in respect of which Nalcor intends to postpone delivery, and (ii) the date(s) of the applicable Original Date(s) of Delivery that are affected by the postponement. Nalcor shall provide this notification to the NSPI representative who is identified as NSPI's representative by the Nalcor Master Agreement in respect of Scheduling matters;
- (b) as soon as practicable following the receipt by NSPI of the notification provided for by **Section 3.6(a)**, Nalcor and NSPI shall consult one another to determine whether a mutually-satisfactory agreement can be reached regarding the terms upon which the Redeliverable Energy will be delivered by Nalcor to NSPI pursuant to this **Section 3.6**. If Nalcor and NSPI reach such an agreement, they shall formalize it in writing and the agreement will represent binding obligations of those Parties. If no such agreement is reached, then Nalcor shall advise NSPI whether or not it intends to proceed with the postponement as set forth in the notification, and if Nalcor affirms the postponement, those Parties shall proceed in accordance with the following provisions of this **Section 3.6**;
- (c) Nalcor and NSPI shall cooperate in good faith and use commercially reasonable efforts to ensure that Redeliverable Energy is Scheduled and delivered in accordance with the provisions of this **Section 3.6** and the Scheduling Protocol, provided that the total quantities of Redeliverable Energy that are provided for pursuant to **Section 3.6(d)** shall be Scheduled and delivered to NSPI by no later than the date that is 365 days following each applicable Original Date of Delivery;
- (d) the Energy delivered by Nalcor to NSPI pursuant to **Section 3.6(c)** shall be delivered at times and in quantities that provide the equivalent economic value to NSPI, as would have been obtained by it had the delivery of the Redeliverable Energy not been postponed pursuant to this **Section 3.6**. Upon receipt of notification from Nalcor pursuant to **Section 3.6(a)** that it intends to proceed with a postponement, NSPI shall act diligently and use commercially reasonable efforts to replace the postponed Energy with other Energy supplies on an economic basis;
- (e) in the absence of an agreement between Nalcor and NSPI pursuant to **Section 3.6(b)**, the equivalency of economic value for the purposes of **Section 3.6(d)** shall be calculated by NSPI by comparing (i) the economic value that would have been obtained by it from the postponed Energy, had it not been postponed, with (ii) the economic value actually obtained by it from the Redeliverable Energy that is subsequently delivered by Nalcor. NSPI shall calculate the economic value of (i), above, by multiplying the quantities of Energy in respect of which delivery was postponed by Nalcor by the Incremental Cost Rate associated with such postponed

Energy. NSPI shall calculate the economic value of (ii), above, by multiplying the quantities of applicable Redeliverable Energy actually delivered by Nalcor by the Incremental Cost Rate associated with such delivered Energy. Any Dispute regarding the application of this **Section 3.6(e)** or **Section 3.6(g)** will constitute a Specified Dispute to be determined pursuant to Section 6 of the Dispute Resolution Procedure;

- (f) The delivery of Redeliverable Energy, once Scheduled, may not be further postponed other than in accordance with **Section 3.6(g)**;
- (g) Nalcor's obligation to Schedule and deliver Redeliverable Energy may be postponed to the extent that Nalcor is unable to perform such obligations due to a Forgivable Event, provided, however, that Nalcor shall not be entitled to postpone the Scheduling and delivery of Redeliverable Energy beyond the date that is 365 days following the applicable Original Date of Delivery; and
- (h) the provisions of all pre-existing contractual arrangements between Nalcor and NSPI governing the sale and delivery of Energy that has become subject to postponement pursuant to this **Section 3.6**, whether arising pursuant to this Agreement, a NSPI Solicitation, the Nalcor Master Agreement (including Transactions thereunder), or otherwise, including those related to the timing of the delivery of such Energy, will be extended or modified to the limited extent necessary to accommodate and give effect to the operation of this **Section 3.6**.

3.7 Measurement and Metering

The measurement and metering of Nalcor Supplied Energy will be conducted in accordance with the prevailing practices of the System Operators for NL and NS. The measurement and metering of any Energy that is sold by Emera to NSPI pursuant to this Agreement will be conducted in accordance with the prevailing practices of the System Operator for NS.

ARTICLE 4 ENERGY AVAILABILITY COMMITMENT

4.1 Energy Availability Commitment

- (a) Except as provided for by **Sections 4.1(b)**, **5.5(a)(i)** and **5.5(a)(ii)**, Nalcor shall make available to NSPI during the Term an amount of Energy that is no less than the product of 1.2 TWh multiplied by the number of Contract Years in the Term (the "**Commitment**").
- (b) For greater certainty, Nalcor's obligation in respect of the Commitment, as modified by **Sections 5.5(a)(i)** and **5.5(a)(ii)**, if applicable, will be reduced to the extent that Nalcor is unable to fulfil such obligation due to Force Majeure, and if at the end of the Term Nalcor has not fulfilled such obligation due to Force Majeure, Nalcor will have no further obligation in respect of any portion of the Commitment that was not fulfilled by reason of Force Majeure.

4.2 Determination of Commitment Fulfilment

For the purpose of determining the fulfilment of the Commitment by Nalcor, the amount of Energy that has been made available by Nalcor to NSPI in respect of each Contract Year will be calculated as the sum of the following, without duplication:

- (a) all Nalcor Supplied Energy in such Contract Year;
- (b) any Energy supplied by Nalcor or an Affiliate to NSPI during such Contract Year that is not:
 - (i) Energy supplied to satisfy a Nalcor Variance Amount,
 - (ii) other Nalcor Supplied Energy, or
 - (iii) Energy comprising the Nova Scotia Block;
- (c) all Nalcor Bid Energy to the extent (i) such Energy is offered by Nalcor in response to a NSPI Solicitation but is not accepted by NSPI pursuant to **Section 2.5(b)** during such Contract Year and to the extent that such Energy is not otherwise supplied to NSPI as described by **Section 4.2(b)**; or (ii) such Energy is the subject of a Transaction that is confirmed on a day-ahead basis pursuant to the Scheduling Protocol, but is not delivered to NSPI by reason of a “Buyer Failure” within the meaning of Section 4.2 of the Nalcor Master Agreement;
- (d) all Energy that is forecasted to be available by the Nalcor Forecast in respect of such Contract Year that exceeds the total Energy quantity sought by NSPI through a NSPI Solicitation for such Contract Year, or, if no NSPI Solicitation is issued in respect of such Contract Year, the total Energy that is forecasted to be available by the Nalcor Forecast in respect of such Contract Year, in either case to the extent that such Energy is not otherwise supplied to NSPI as described by **Section 4.2(b)**; and
- (e) all Redeliverable Energy that would have been delivered in the applicable Contract Year, but for its Scheduling having been postponed into the subsequent Contract Year by operation of **Section 3.6**, provided that the amount of Energy to be attributed pursuant to this **Section 4.2(e)** will be the amount that was originally intended to be delivered in the absence of the postponement, and provided that such Energy amount will not be credited again toward the fulfillment of the Commitment in the subsequent Contract Year.

ARTICLE 5 VARIANCES

5.1 Nalcor Progress Report

By no later than 90 days following the end of each Contract Year other than the last Contract Year, Nalcor shall provide a progress report to NSPI and Emera on Nalcor’s ability to fulfil

the Commitment (each a “**Progress Report**”). Each Progress Report will include the information specified by **Schedule 4**. NSPI and Emera will each have the right to challenge Nalcor’s conclusion in any Progress Report, and if Nalcor, Emera and NSPI cannot agree on the challenged portion of the Progress Report, the matter will constitute a Specified Dispute and the challenged content of the Progress Report will be determined pursuant to Section 6 of the Dispute Resolution Procedure. Each Progress Report, as mutually-agreed upon or expertly-determined, as applicable, will be referred to as a “**Settled Forecast**”.

5.2 Resolution Process

If any Settled Forecast predicts that the actual amount of Energy to be made available to NSPI over the Term will be less than the Commitment (such shortfall amount, in MWh, as adjusted annually based on each successive Settled Forecast, being a “**Variance**”), then, in respect of the Variance, Nalcor and Emera shall proceed in accordance with **Sections 5.3 to 5.9**, as applicable. The date on which a Settled Forecast that forecasts a Variance is accepted by Emera and NSPI or finally determined pursuant to a Specified Dispute pursuant to **Section 5.1** is referred to as a “**Variance Trigger Date**”. Each Settled Forecast will specify the prorated portion of the Variance that is to be satisfied during the next whole Contract Year (the “**Annual Variance Amount**”). The Annual Variance Amount will be calculated as the Variance predicted by the applicable Settled Forecast divided by the number of whole Contract Years then remaining in the Term.

5.3 Negotiated Solution

Within 20 days following a determination of a Variance, Nalcor and Emera shall each appoint a senior executive, who shall together work cooperatively and in good faith over a period not to exceed three months to determine a mutually-agreeable commercially reasonable means of satisfying the Variance. If Nalcor and Emera do not agree upon a resolution that is acceptable to each of them in their sole discretion and that preserves NSPI’s rights under this Agreement, then Nalcor, Emera and NSPI shall proceed pursuant to **Sections 5.4 to 5.9**, as applicable.

5.4 Effect of Variance on Nalcor Commitment Obligation

If a Variance occurs, Nalcor will remain bound to perform all of its obligations hereunder, except that in such event, the Commitment will be reduced by the cumulative Emera Variance Amounts.

5.5 Emera and Nalcor Variance Amounts

Emera and Nalcor shall be responsible for any Variance as follows:

- (a) Nalcor and Emera Variance Amounts
 - (i) Subject to **Section 5.5(a)(ii)**, in each Contract Year following a Variance Trigger Date, Emera shall make available to NSPI, in accordance with this Agreement, an amount of Energy that is equal to the lesser of: (A) the Annual Variance Amount in respect of such Contract Year, and (B) 300 GWh. The Energy amount that Emera is required to make available to NSPI in

respect of a given Contract Year pursuant to this **Section 5.5(a)** will be referred to as the “**Emera Variance Amount**” in respect of such Contract Year.

- (ii) If a subsequent Settled Forecast predicts that future Annual Variance Amounts will be reduced from the then-current Annual Variance Amount, then, notwithstanding the predicted reduction, Emera may elect to remain obliged to continue to make the associated then-current Emera Variance Amount available to NSPI in each remaining Contract Year of the Term. If Emera so elects, Nalcor’s obligations to NSPI in respect of the Commitment and any applicable Nalcor Variance Amounts will be commensurately reduced. Emera shall communicate any such election to NSPI and Nalcor by Notice within 20 days following, as applicable: (A) the date of the delivery by Nalcor of the relevant Progress Report, if mutually-agreed, or (B) the date of the final conclusion of a dispute resolution process establishing such Settled Forecast.
 - (iii) Nalcor shall be responsible for any Annual Variance Amount in excess of each Emera Variance Amount (the “**Nalcor Variance Amount**”). In respect of each Contract Year following a Variance Trigger Date, Nalcor’s obligation in respect of the Nalcor Variance Amount will be to make available to NSPI an amount of Energy, if any, by which the Annual Variance Amount exceeds the Emera Variance Amount for such Contract Year.
- (b) Points of Delivery - Energy supplied to NSPI in respect of a Variance will be delivered in accordance with the following:
- (i) in the case of Energy supplied in respect of an Emera Variance Amount, the point of delivery for such Energy will be, at the option of Emera, the Delivery Point or any other point on the NS Transmission System; and
 - (ii) in the case of Energy supplied in respect of a Nalcor Variance Amount, the point of delivery for such Energy will be the Delivery Point or such other point on the NS Transmission System as may be proposed by Nalcor and approved by NSPI.
- (c) Variance Forecasts - On or before the last Business Day preceding the start of each calendar month following a Variance Trigger Date, Emera and Nalcor, if applicable, shall each provide good faith forecasts to NSPI of Energy that is forecasted to be available for delivery and sale to NSPI in amounts sufficient to satisfy Emera’s and Nalcor’s respective obligations under **Section 5.5(a)** during the following 24 months at the applicable points of delivery (the “**Variance Forecasts**”). The Variance Forecasts will include forecasts of the total of such available Energy in respect of the Peak Hours and Off-Peak Hours of each of the applicable 24 months. Nalcor’s obligation to provide Variance Forecasts in accordance with the foregoing is in addition to its obligation to provide Nalcor Forecasts.

- (d) Bids - Following a Variance Trigger Date, NSPI shall provide Notice to Emera, in addition to Nalcor, of the issuance of each NSPI Solicitation in the manner provided for by **Section 2.2**. Emera and Nalcor, if applicable, shall each bid the Energy forecasted by their most recent respective Variance Forecasts to be available during Peak Periods and Off-Peak Periods of each calendar month of the relevant Contract Year, to the extent that the NSPI Solicitation has requested offers for the supply of Energy during the Peak Periods and Off-Peak Periods during such months. The minimum 30 day period for response to the NSPI Solicitation that is referred to in **Section 2.2** and the further 15 day period within which NSPI must advise as to whether it has accepted the bid that is referred to in **Section 2.5** apply equally to any Emera bid of its Variance Forecast amounts as to the Nalcor Bid process (including in respect of any Nalcor Variance Forecast amounts). Acceptance of any such bid by NSPI will: (i) obligate the applicable Party to Schedule, sell and deliver to NSPI the Energy so accepted by NSPI, subject to the provisions of **Section 3.6**, applied *mutatis mutandis* and subject to the occurrence of Forgivable Events, and (ii) obligate NSPI to purchase and receive such Energy from that Party, in each case in accordance with the applicable EEI Master Agreement.
- (e) Bid Prices - Nalcor - The pricing of bids made by Nalcor pursuant to **Section 5.5(d)** will be subject to the pricing cap set out in **Section 2.4**.
- (f) Bid Prices - Emera - In pricing bids made pursuant to **Section 5.5(d)**, Emera shall consider, in respect of the applicable time periods covered by its bid, NSPI's market alternatives for Energy procurement and Emera's sales opportunities in other accessible north-eastern electricity markets available to Emera at any time. The prices offered by Emera in each such bid by Emera will be the price for the Energy delivered in accordance with **Section 5.5(b)(i)** and will not exceed the greater of:
- (i) the hourly settled Day-Ahead Price at the ISO-NE Mass Hub node (described as "4000_:_H.INTERNAL_HUB" by the ISO-NE) for the hour of delivery. For greater certainty, this price will be the Day-Ahead Price, and will not be reduced by any real or implied market fees, Tariff Charges, Transmission Losses or other charges; and
 - (ii) the price associated with any alternative market opportunities identifiable by Emera at the time of its bid that are available to Emera at any time within one year following the submission by Emera of its bid into the NSPI Solicitation, to the extent that Emera can demonstrate:
 - (A) a liquid trading node with associated published forward pricing;
 - (B) an Available Transmission Path;
 - (C) available storage capacity, sufficient to allow Emera or its Affiliates to store the Energy that is subject to the pricing mechanism set forth in this **Section 5.5(f)(ii)** until the time of such alternative market opportunity; and

- (D) forecasted available generation Capacity, sufficient to allow Emera or its Affiliates to convert the stored Energy referred to in **Section 5.5(f)(ii)(C)** to Energy at the time of such alternative market opportunity,

less incremental Tariff Charges, Transmission Losses and other charges that would be incurred to deliver the Energy that is the subject of Emera's bid to such market, and for greater certainty, such price will not reflect a deduction for any costs for Sunk Transmission.

The pricing mechanisms provided for by **Sections 5.5(f)(i)** and **5.5(f)(ii)** will be in reference to an Energy product with the attributes described in **Section 5.6(a)(i)**. Emera bids that offer pricing that is compliant with this **Section 5.5(f)** will be deemed to be in good faith with respect to price.

5.6 Commercial Terms Governing Emera Variance Amount Transactions

- (a) Emera Variance Transactions - In respect of Energy that is delivered and sold by Emera to NSPI in satisfaction of any Emera Variance Amount:
- (i) such Energy will be a non-firm Energy-only product, and Emera will retain any rights and value associated with such Energy in respect of associated Capacity and GHG Credits;
 - (ii) NSPI shall utilize all such Energy for the purpose of end-use consumption by its customers within NS only, provided that NSPI will have the limited right to resell such Energy during periods in which such Energy is surplus to NSPI's requirements due to such variations in NSPI's load or generation that are identified by NSPI subsequent to its acceptance of the applicable Emera bid giving rise to the transaction in respect of such Energy. For greater certainty, Emera and NSPI agree that it is the intention of those Parties that NSPI will not be a market reseller of Energy supplied in respect of an Emera Variance Amount, except in the circumstances identified above; and
 - (iii) the sale and delivery by Emera to NSPI of Energy pursuant to this Agreement will be Scheduled on a day-ahead basis. Emera and NSPI shall cooperate in good faith and use commercially reasonable efforts to ensure that all Energy that Emera is obligated to sell and that NSPI is obligated to purchase pursuant to **Section 5.5(d)** is Scheduled and delivered in a manner generally consistent with the process set forth in the Scheduling Protocol.
- (b) Emera Master Agreement
- (i) By no later than 60 days following the first Variance Trigger Date, Emera and NSPI shall enter into an Edison Electrical Institute standard form Master Power Purchase & Sale Agreement, which will be based on the form of the Nalcor Master Agreement, as modified by this Agreement, with any changes

that are necessary or commercially reasonable (the “**Emera Master Agreement**”). **Section 1.2(m)** applies to this **Section 5.6(b)(i)**.

- (ii) The Emera Master Agreement will govern any transactions between Emera and NSPI pursuant to this Agreement in respect of the purchase and sale of Energy other than transactions governed by a PPA pursuant to **Section 5.7(b)(i)**. Subject to the foregoing, Emera and NSPI shall enter into a Transaction pursuant to the Emera Master Agreement in respect of each Emera bid that is wholly or partially accepted by NSPI in accordance with **Section 5.5(d)**.

5.7 Emera Wind with Nalcor Balancing Option

- (a) NSPI will have the option, but will not be obligated to, construct or contract wind generation facilities to mitigate some or all of the Variance included in the Emera Variance Amount. NSPI shall give Notice to Nalcor and Emera of its election in respect of this option within 90 days following a Variance Trigger Date. If NSPI exercises such option, Emera’s obligation to make Energy available to NSPI in respect of an Emera Variance Amount will be reduced by the projected annual average Energy output of such wind generation facilities in each Contract Year following the commencement of the commercial operation of such facilities.
- (b) To the extent that NSPI declines to exercise its option under **Section 5.7(a)**, Emera may, directly or through an Affiliate of Emera, exercise the same option to construct or contract wind generation facilities to satisfy some or all of Emera’s obligations in respect of the Emera Variance Amounts, and in this event, the following provisions apply:
 - (i) if Emera and NSPI enter into a long term power purchase agreement in respect of such Energy on terms approved by the UARB (the “**PPA**”), the Emera Variance Amounts will be reduced by the amount of Energy thereby contracted for in each remaining whole Contract Year, and
 - (ii) if no PPA is entered into, Emera may in its sole discretion construct or contract wind generation for the purpose of supplying all or a portion of the Emera Variance Amounts.
- (c) If NSPI or Emera decide to construct or contract wind generation facilities as contemplated by **Sections 5.7(a)** or **5.7(b)** to satisfy Emera’s obligations in respect of the Emera Variance Amounts, then, for greater certainty, Nalcor will have no responsibility for any failure or inability of such wind generation facilities to provide or make available sufficient Energy.

5.8 Nalcor Balancing

In the event that one or both of Emera and NSPI exercise the options to construct or contract wind generation in accordance with **Section 5.7(a)** or **5.7(b)**, the following will apply:

- (a) Nalcor shall enter into a separate balancing services agreement with each such Party that indicates its intention to do so pursuant to **Section 5.8(b)** substantially in the form attached hereto as **Schedule 5** (the “**Balancing Service Agreement**”);
- (b) Any balancing service agreement to be entered into pursuant to **Section 5.8(a)** shall be executed by the applicable Parties within 365 days following the provision of Notice to Nalcor by NSPI or Emera, as applicable, of the notifying Party’s exercise of its option pursuant to **Section 5.7(a)** or **5.7(b)** and such Party’s intention to enter into a balancing service agreement with Nalcor;
- (c) the maximum aggregate balancing service that Nalcor will be obliged to provide under the agreement or agreements entered into pursuant to **Section 5.8(a)** will be 100 MW;
- (d) the balancing service will be provided by Nalcor for the purpose of balancing the Energy output of the specific wind generation facilities constructed or contracted in accordance with **Section 5.7(a)** or **5.7(b)**;
- (e) for greater certainty, Nalcor will continue to be obligated to make Energy available to NSPI in the amount of the Nalcor Variance Amount, if any; and
- (f) for greater certainty, Energy delivered by one Party to another pursuant to the Balancing Service Agreement will not be considered to be Nalcor Generated Energy, nor to satisfy any portion of the Commitment or Nalcor’s obligations in respect of any Nalcor Variance Amount, if applicable.

5.9 Sources of Supply

For the purposes of satisfying any obligations arising pursuant to **Section 5.5**:

- (a) Emera and Nalcor each may, in its sole discretion, select whatever sources of Energy supply it deems appropriate to satisfy its respective obligations, including market purchases or new generation development
- (b) a source of Energy, whether obtained by market purchases, new generation development or otherwise, need not be in NS or NL;
- (c) should a Party be unable to supply such Energy from a particular source or sources for any reason, including by operation of law, the Party shall procure such Energy from such other source or sources, whether in NS, NL or elsewhere, as is necessary to satisfy its obligations under **Section 5.5**.

5.10 Wind Generation

All references in this **Article 5** to wind generation will be taken to include references to solar, tidal or other intermittent generation facilities in NS or adjacent waters with such changes as are required by the context.

ARTICLE 6

PERMITS, LICENCES AND APPLICABLE LAW

6.1 Licences and Compliance with Law

- (a) Each Party shall be responsible for obtaining and maintaining any licences and permits as may be required for its respective performance of this Agreement.
- (b) Each Party shall comply with any Applicable Law of any Authorized Authority with jurisdiction over the subject matter of this Agreement.

ARTICLE 7

CREDIT SUPPORT, PAYMENT AND AUDIT RIGHTS

7.1 Credit Assurances

The credit risk management provisions of the Nalcor Master Agreement will apply to each transaction for the sale of Nalcor Supplied Energy by Nalcor to NSPI pursuant to this Agreement. If a Variance occurs, the credit risk management provisions of the Emera Master Agreement will apply to each transaction for the sale of Energy by Emera to NSPI pursuant to this Agreement other than transactions that are governed by a PPA, if applicable.

7.2 Payment Terms Prescribed by Master Agreements

The provisions set out in Article Six ("Payment and Netting") of the Nalcor Master Agreement will govern all payments to be made pursuant to that agreement, including in respect of each transaction for the sale of Nalcor Supplied Energy by Nalcor to NSPI, and in addition will apply, *mutatis mutandis*, to any payments to be made by Nalcor to NSPI, NSPI to Nalcor, Nalcor to Emera, or Emera to Nalcor pursuant to this Agreement. If a Variance occurs, the provisions set out in Article Six ("Payment and Netting") of the Emera Master Agreement will govern all payments to be made pursuant to that agreement, including in respect of each transaction for the sale of Energy by Emera to NSPI, and in addition will apply, *mutatis mutandis*, to any payments to be made by Emera to NSPI or by NSPI to Emera pursuant to this Agreement, but for greater certainty those provisions will not apply to payments to be made in respect of transactions between Emera and NSPI that are governed by a PPA.

7.3 Record Keeping and Audit Rights

Each Party shall keep complete and accurate records and all other data required by it for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Term shall be retained for the Term; all other documents shall be retained for at least seven years. Each Party shall provide or cause to be provided to the other Parties reasonable access to the relevant and appropriate records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Parties to comply with their obligations to Authorized Authorities, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Such records and data

will include those pertaining to Nalcor Forecasts, Nalcor's alternative market opportunities (to the extent relied on by Nalcor pursuant to **Section 2.4(b)**), the Progress Reports, the determination of the equivalency of economic value pursuant to **Section 3.6(e)**, the determination of the Incremental Cost Rate, Emera's alternative market opportunities (to the extent relied on by Emera pursuant to **Section 5.5(f)(ii)**), and quantities of Energy delivered or received at the Delivery Point or any other applicable point of delivery. Each Party may use its own employees or a mutually-agreed third party auditor for purposes of any such review of records provided that those employees or that auditor are bound by the confidentiality requirements provided for by **Article 14**. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor. This **Section 7.3** will be construed in accordance with **Section 14.8**.

ARTICLE 8 TAXES

8.1 Tax-Related Terms Prescribed by Master Agreements

- (a) Nalcor and NSPI Tax Provisions - The provisions set out in Article Nine ("Governmental Charges") of the Nalcor Master Agreement will govern the respective responsibilities and obligations of Nalcor and NSPI in relation to tax-related matters pursuant to that agreement, including in respect of each transaction for the sale of Nalcor Supplied Energy by Nalcor to NSPI, and in addition such provisions will govern, *mutatis mutandis*, the respective responsibilities and obligations of Nalcor and NSPI in relation to tax-related matters pursuant to this Agreement.
- (b) Emera and NSPI Tax Provisions - The provisions set out in Article Nine ("Governmental Charges") of the Emera Master Agreement will govern the respective responsibilities and obligations of Emera and NSPI in relation to tax-related matters pursuant to that agreement, including in respect of each transaction for the sale of Energy by Emera to NSPI, and in addition such provisions will govern, *mutatis mutandis*, the respective responsibilities and obligations of Emera and NSPI in relation to tax-related matters pursuant to this Agreement, but for greater certainty those provisions will not apply to transactions between Emera and NSPI that are governed by a PPA.

ARTICLE 9 TERM AND TERMINATION

9.1 Term

The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall terminate in accordance with **Section 9.2**.

9.2 Termination of Agreement

This Agreement shall terminate on the earliest to occur of any of the following events:

- (a) August 31, 2041, or such later date as provided for by **Section 3.6(h)**;
- (b) written agreement of the Parties to terminate; and
- (c) termination of the ML-JDA pursuant to Section 11.2(e) or (f) thereof, or in accordance with a court order or an arbitral award issued pursuant to the ML-JDA's dispute resolution procedure.

9.3 Effect of Termination

- (a) Obligations on Termination - When this Agreement terminates:
 - (i) each Party shall promptly return to the other Parties all respective Confidential Information of the other Parties in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Parties (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Article 14**); and
 - (ii) no Party shall have any obligation to the other Parties in relation to this Agreement or the termination hereof, except as set out in this **Section 9.3**.
- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
 - (i) the final settlement of all accounts between the Parties;
 - (ii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;
 - (iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement; and
 - (iv) any other obligations that survive pursuant to **Section 18.14**.

ARTICLE 10 DEFAULT AND REMEDIES

10.1 Nalcor Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a “**Nalcor Default**”):

- (a) Nalcor fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Emera or NSPI, as applicable, that such amount is due and owing;
- (b) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera or NSPI, as applicable, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera or NSPI, as applicable;
- (c) any representation or warranty made by Nalcor in this Agreement is false or misleading in any material respect;
- (d) Nalcor ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (e) any Insolvency Event occurs with respect to Nalcor.

10.2 Remedies upon Nalcor Event of Default

- (a) General - Upon the occurrence of a Nalcor Default and at any time thereafter, provided Emera or NSPI, as applicable, is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Emera or NSPI, as applicable, shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Emera or NSPI, as applicable, are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to **Article 13**, Emera or NSPI, as applicable, may recover all Losses suffered by it that are due to a Nalcor Default, including, for the avoidance of doubt,

any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by it to recover any amounts owed to it by Nalcor under this Agreement.

10.3 Emera Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Emera under this Agreement (an “**Emera Default**”):

- (a) Emera fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Nalcor or NSPI, as applicable, that such amount is due and owing;
- (b) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor or NSPI, as applicable, unless the cure reasonably requires a longer period and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor or NSPI, as applicable;
- (c) any representation or warranty made by Emera in this Agreement is false or misleading in any material respect;
- (d) Emera ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (e) any Insolvency Event occurs with respect to Emera.

10.4 Remedies upon Emera Event of Default

- (a) General - Upon the occurrence of an Emera Default and at any time thereafter, provided Nalcor or NSPI, as applicable, is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Nalcor or NSPI, as applicable, shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Nalcor or NSPI, as applicable, are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to **Article 13**, Nalcor or NSPI, as applicable, may recover all Losses suffered by it that are due to an Emera Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by it to recover any amounts owed to it by Emera under this Agreement.

10.5 NSPI Events of Default

Except to the extent excused by a Force Majeure, the occurrence of one or more of the following events shall constitute a default by NSPI under this Agreement (a “**NSPI Default**”):

- (a) NSPI fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Nalcor or Emera, as applicable, that such amount is due and owing;
- (b) NSPI is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.5(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NSPI of Notice thereof from Nalcor or Emera, as applicable, unless the cure reasonably requires a longer period and NSPI is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor or Emera, as applicable;
- (c) any representation or warranty made by NSPI in this Agreement is false or misleading in any material respect;
- (d) NSPI ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (e) any Insolvency Event occurs with respect to NSPI.

10.6 Remedies upon NSPI Event of Default

- (a) General - Upon the occurrence of a NSPI Default and at any time thereafter, provided Nalcor or Emera, as applicable, is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Nalcor or Emera, as applicable, shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Nalcor or Emera, as applicable, are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to **Article 13**, Nalcor or Emera, as applicable, may recover all Losses suffered by it that are due to a NSPI Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by it to recover any amounts owed to it by NSPI under this Agreement.

10.7 Equitable Relief

Nothing in this **Article 10** shall limit or prevent a Party from seeking equitable relief including specific performance, or a declaration to enforce another Party's obligations under this Agreement.

10.8 No Cross Default

For greater certainty, this Agreement does not modify any of the obligations of the Parties pursuant to the Formal Agreements and there shall be no cross-defaults between this Agreement and the Formal Agreements.

ARTICLE 11 FORCE MAJEURE

11.1 Effect of Invoking Force Majeure and Notice

- (a) If by reason of an event of Force Majeure, a Party is not reasonably able to fulfil an obligation, other than an obligation to pay or spend money, in accordance with the terms of this Agreement, then such Party shall:
- (i) forthwith Notify the other Parties of such Force Majeure, or orally so notify the other Parties (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
 - (ii) be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
 - (iii) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;

- (iv) as soon as reasonably possible after such Force Majeure, fulfil or resume fulfilling its obligations hereunder;
 - (v) provide the other Parties with prompt Notice of the cessation or partial cessation of such Force Majeure; and
 - (vi) not be responsible or liable to the other Parties for any loss or damage that the other Parties may suffer or incur as a result of such Force Majeure.
- (b) Notwithstanding **Sections 11.1(a)(i)** and **18.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a duration of less than 24 hours shall be given to an operational representative of the receiving Parties. Each Party shall provide telephone and other electronic contact information to the other Parties for the purposes of this **Section 11.1(b)** prior to the start of the first Contract Year. Any Party may change such contact information from time to time by giving Notice of such change to the other Parties in accordance with **Section 18.1**.

ARTICLE 12

LIABILITY AND INDEMNITY

12.1 Nalcor Indemnity

Nalcor shall indemnify, defend, reimburse, release and save harmless:

- (a) Emera and its Affiliates other than NSPI and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the “**Emera Group**”), and
- (b) NSPI and its directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the “**NSPI Group**”)

from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Emera Group or the NSPI Group, as applicable, by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Nalcor Group occurring in connection with, incidental to or resulting from Nalcor’s obligations under this Agreement.

12.2 Emera Indemnity

Emera shall indemnify, defend, reimburse, release and save harmless:

- (a) Nalcor and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the “**Nalcor Group**”), and

- (b) the NSPI Group

from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Nalcor Group or the NSPI Group, as applicable, by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Emera Group occurring in connection with, incidental to or resulting from Emera's obligations under this Agreement.

12.3 NSPI Indemnity

NSPI shall indemnify, defend, reimburse, release and save harmless:

- (a) the Nalcor Group, and
- (b) the Emera Group

from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Nalcor Group or the Emera Group, as applicable, by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the NSPI Group occurring in connection with, incidental to or resulting from NSPI's obligations under this Agreement.

12.4 Own Property Damage

For the avoidance of doubt, it is the Parties' intent that, subject to any right a Party may have to seek compensation from a third party who caused the Loss or from insurance, each Party shall be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements (including, with respect to any member of the Nalcor Group, such property of such member of the Nalcor Group, with respect to any member of the Emera Group, such property of such member of the Emera Group, and, with respect to any member of the NSPI Group, such property of such member of the NSPI Group), howsoever incurred.

12.5 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Parties and the other Persons as set forth in **Sections 12.1, 12.2 or 12.3** as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this Section.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the

Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this Section at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 12.5(h)**.
- (e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend

such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

- (f) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable third party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.
- (g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.
- (h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this Section shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

12.6 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured Claim, neither the Indemnified Party nor the Indemnitor, as the case may be, shall negotiate, settle, retain counsel to defend or defend any such Claim, without having first obtained the prior approval of the insurer(s) providing the relevant insurance coverage.

ARTICLE 13 LIMITATION OF DAMAGES

13.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 12** and this **Article 13** shall apply to any and all Claims.

13.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, or to NSPI or any other member of the NSPI Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, or to NSPI or any other member of the NSPI Group, nor shall NSPI or any member of the NSPI Group be liable to Nalcor or any other member of the Nalcor Group or to Emera or any other member of the Emera Group, for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement except that such consequential, incidental, indirect or punitive damages awarded against a member of the Nalcor Group, the Emera Group, or the NSPI Group, as the case may be, with respect to matters relating to this Agreement, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 13.2**. For the purposes of this **Section 13.2**, lost revenues or profits in relation to the purchase or sale of Energy shall not be considered to be consequential, incidental or indirect damages, provided however that a Party must still establish such lost revenues or profits in accordance with Applicable Law.

13.3 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim for indemnification by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to (i) any insurance proceeds received or entitled to be received in relation to the Claim, and (ii) the value of any related, determinable Tax benefits realized or capable of being realized by the affected Party in relation to the occurrence of such net loss or cost.

ARTICLE 14 CONFIDENTIALITY

14.1 Confidentiality and Restricted Use

- (a) Subject to the terms and conditions of this Agreement, each Receiving Party shall not use the Confidential Information furnished to it by a Disclosing Party or its Representatives for any purpose other than the exercise of its rights and the performance of its obligations under this Agreement (the “**Authorized Purpose**”) and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect

the Confidential Information from disclosure or misuse, which will in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

- (b) The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in this **Article 14**.
- (c) Except as otherwise provided by this **Article 14**, the Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:
 - (i) be informed by the Receiving Party of the confidential nature of such Confidential Information; and
 - (ii) unless such Representative or Lender Recipient is already bound by a duty of confidentiality to the Receiving Party that is substantially similar to the obligations under this **Article 14**, be directed by the Receiving Party, and such Representative or Lender Recipient shall agree in writing, before receipt of such Confidential Information, to be bound by the obligations of, and to treat such Confidential Information in accordance with the terms and conditions of, this Agreement as if it were a Party hereto.
- (d) The Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or, if so requested in writing by the Disclosing Party, destroy and certify such destruction (such certificate to be signed by an officer of the Receiving Party), all Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party or its Representatives relating to the Confidential Information of the Disclosing Party, within 30 days of a written request by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Confidential Information only for administering compliance with this Agreement or if required to retain such information for regulatory purposes, but such copies must be securely maintained and segregated from the other records of the Receiving Party.
- (e) The obligations of confidentiality with respect to Confidential Information shall endure for the Term, provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the Term for such additional period as such information remains a Trade Secret.
- (f) Notwithstanding the foregoing, the obligations set forth in this Agreement shall not extend to any information which:

- (i) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this **Article 14** or other obligation of confidentiality;
 - (ii) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this **Article 14** or other obligation of confidentiality;
 - (iii) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
 - (iv) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
 - (v) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this **Article 14** or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
 - (vi) is approved in writing in advance for release by the Disclosing Party.
- (g) Each Party agrees that it shall ensure compliance with and be liable for any violation of this **Article 14** by that Party's Representatives and that it shall indemnify and hold harmless the other Parties and their Representatives against any Losses, costs, damages and Claims suffered or incurred by or asserted against such Parties or their Representatives flowing from such violation. This indemnity will survive termination of this Agreement.
- (h) Each Receiving Party agrees that each Disclosing Party may be irreparably damaged by any unauthorized disclosure, communication or use of a Disclosing Party's Confidential Information by a Receiving Party or its Representatives and that monetary damages may not be sufficient to remedy any breach by a Receiving Party or its Representatives of any term or provision of this **Article 14** and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to any other remedy available at law or in equity.

14.2 Acknowledgments

Each Receiving Party acknowledges and agrees with each Disclosing Party that:

- (a) subject to **Section 14.3**, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the

Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;

- (b) subject to **Section 14.3**, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and
- (d) no licence to the Receiving Party under any copyright, trademark, patent or other intellectual property right is either granted or implied by the conveying of Confidential Information to the Receiving Party.

14.3 Reliance on Certain Confidential Information

Notwithstanding **Sections 14.2(a)** and **14.2(b)**, a Party may rely on any Confidential Information comprising or included within each of the following for the purposes contemplated by this Agreement:

- (a) Nalcor Bids or Progress Reports provided by Nalcor;
- (b) Variance Forecasts provided by either Emera or Nalcor;
- (c) bids made by either Emera or Nalcor pursuant to **Section 5.5(d)**;
- (d) Settled Forecasts; and
- (e) NSPI Solicitations.

14.4 Disclosures Required by Law

- (a) Nalcor and its Affiliates are at all times subject to the provisions of NL legislation as such legislation may be amended or varied, including, but not limited to, the *Access to Information and Protection of Privacy Act* (NL) ("**ATIPPA**"). The Parties acknowledge that Nalcor and its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of this Agreement.
- (b) Nalcor hereby acknowledges and agrees that the Confidential Information disclosed by Emera and NSPI and their Affiliates is "commercially sensitive information" as defined in the *Energy Corporation Act* (NL) and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to Emera or NSPI or their Affiliates. It is further acknowledged and agreed that Emera and NSPI have each represented to Nalcor that the Confidential Information disclosed by it and its Affiliates is treated consistently in a confidential manner by them and is customarily

not provided to their competitors. Therefore, pursuant to Section 5.4(1)(b) of the *Energy Corporation Act*, Nalcor shall refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of Newfoundland Trial Division, may occur. To the extent permitted by ATIPPA, Nalcor shall argue against disclosure, support Emera or NSPI, as applicable, in any submission concerning such Party's entitlement to be represented, and make arguments in support of non-disclosure at each step in this process.

- (c) If the Receiving Party or any of its Representatives is required by Applicable Law or requested by any Person pursuant to ATIPPA, or by any Authorized Authority under any circumstances, to disclose any Confidential Information, then, subject to Applicable Law, the Receiving Party may only disclose Confidential Information if, to the extent permitted by Applicable Law, it has:
 - (i) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
 - (ii) obtained a written legal opinion that disclosure is required;
 - (iii) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
 - (iv) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;
 - (v) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
 - (vi) disclosed only that portion of the Confidential Information that is legally required to be disclosed.
- (d) Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of this Agreement, provided that all relevant obligations under this **Article 14**, including **Section 14.4(c)**, have been met. For the avoidance of doubt, Nalcor and its Affiliates will have no liability to Emera or NSPI or their Affiliates for any disclosure of Confidential Information that Nalcor or any of its Affiliates is lawfully required to make pursuant to ATIPPA.
- (e) In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a

Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

- (i) any proceeding between Nalcor or an Affiliate of Nalcor, on the one hand, and Emera or NSPI or an Affiliate thereof, on the other hand; or
- (ii) any proceeding between a Receiving Party and another Person.

In connection with the foregoing, every Receiving Party shall consent to such an order of confidentiality upon request of the relevant Disclosing Party. Any Confidential Information that is required to be disclosed but is subject to an order of confidentiality or similar order shall continue to be Confidential Information subject to protection under this Agreement.

14.5 NSPI Confidentiality Obligations

Without limiting the provisions of this Agreement:

- (a) NSPI shall keep confidential from Emera, NSPI's other Affiliates and their respective Representatives: the Nalcor Forecasts, any Nalcor Variance Forecasts, all information received from Nalcor in response to a NSPI Solicitation, and all information concerning the price, quantities and timing of delivery of any Nalcor Supplied Energy purchased by NSPI pursuant to this Agreement or the Nalcor Master Agreement;
- (b) NSPI shall keep the Progress Reports confidential from its Affiliates other than Emera and their respective Representatives; and
- (c) NSPI shall keep confidential from its other Affiliates and their respective Representatives, and from Nalcor and its Affiliates and their respective Representatives, as applicable: the Emera Variance Forecasts, all information received from Emera in response to a NSPI Solicitation, and all information concerning the price, quantities and timing of delivery of any Energy purchased by NSPI pursuant to this Agreement or the Emera Master Agreement.

14.6 UARB Confidentiality

If NSPI is required by the UARB to disclose:

- (a) information of a commercially-sensitive and confidential nature, as determined by Nalcor, that is provided by Nalcor to NSPI pursuant to this Agreement, including the Nalcor Forecasts, any Nalcor Variance Forecasts, Progress Reports, Nalcor Bids, and Nalcor's alternative market opportunities, which NSPI may be required to disclose to the UARB; or

- (b) information of a commercially-sensitive and confidential nature, as determined by Emera, that is provided by Emera to NSPI pursuant to this Agreement, including Emera Variance Forecasts and Emera's alternative market opportunities,

then, NSPI shall use commercially reasonable efforts in accordance with UARB policy to ensure that such information will be filed and held on a confidential basis by the UARB and not released into the public domain.

14.7 NSPI Affiliate Transactions

NSPI may receive a request by, or directive from, the UARB to seek the production of certain books and records of Emera, and to produce such books and records to the UARB, in order for the UARB to: (a) examine the market competitiveness of this Agreement; or (b) verify that this Agreement is independent and in no way linked to agreements between Emera and third parties in a manner that causes financial harm or loss to NSPI. NSPI agrees to promptly notify Emera of any such request or requirement. Upon receipt of such notice from NSPI, Emera agrees to disclose to NSPI all relevant information relating to contracts between Emera and third parties pursuant to which Emera offers the same services, or services that are substantially similar to, the services described in this Agreement. NSPI agrees to use commercially reasonable efforts to obtain assurances from the UARB that confidential treatment will be accorded to such information that is disclosed pursuant to this **Section 14.7**.

14.8 Restrictions on Emera Access to Nalcor Confidential Information

- (a) For the purposes of interpreting Emera's right to disclose Confidential Information to its Representatives as provided for by **Section 14.1(c)**, the following shall apply in relation to the disclosure by Emera of any Confidential Information contained in the Progress Reports or of any other Nalcor Confidential Information that may be obtained by Emera pursuant to this Agreement:
 - (i) Subject to **Section 14.8(a)(iii)**, the only individuals who will be considered to be Emera's "Representatives" are the members of its board of directors, its chief executive officer, other executive officers (other than those who have Marketing Personnel as their direct or indirect reports), internal legal counsel, Emera's external legal advisors and consultants, and, subject to **Section 14.8(a)(ii)**, such other employees of Emera and its Affiliates who the Emera CEO determines, acting reasonably, are necessary to advise Emera with respect to the Authorized Purpose;
 - (ii) Subject to **Section 14.1(f)** and **Section 14.8(a)(iii)**, in no event shall Emera disclose Nalcor's Confidential Information to its Marketing Personnel or to its Affiliates or their respective Representatives; and
 - (iii) If a Settled Forecast predicts a Variance, Emera may provide its Marketing Personnel, and any executive officers to whom its Marketing Personnel report, with the information described in Sections 4.0 and 5.0 of **Schedule 4**.

- (b) If, pursuant to **Section 15.2(a)**, Emera assigns Emera Rights to Emera Energy Incorporated, a successor thereof, or another Affiliate of Emera that undertakes as a primary business activity the sale or purchase for resale of Capacity, Energy, Energy derivatives or ancillary services in the wholesale power markets, then, notwithstanding any other provision of this Agreement:
 - (i) Emera shall not assign to such assignee its rights to be provided with Progress Reports and to challenge Progress Reports pursuant to **Section 5.1**, and Section 2.1 of the form of Assignment Agreement entered into by the Parties to effect the assignment will reflect the reservation of such rights by Emera;
 - (ii) Subject to **Section 14.8(b)(iii)**, **Section 14.8(a)** will continue to govern the rights and obligations of Emera, as assignor, with respect to its handling of the Confidential Information contained in the Progress Reports; and
 - (iii) If a Settled Forecast predicts a Variance, Emera may provide such assignee, including its Marketing Personnel, with the information described in Sections 4.0 and 5.0 of **Schedule 4**.

14.9 Disclosure of Agreement

Each Party hereby agrees to any other Party making this Agreement public at any time and from time to time after the Effective Date.

ARTICLE 15 ASSIGNMENT AND CHANGE OF CONTROL

15.1 Nalcor Assignment Rights

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Nalcor Rights**”), without the prior written consent of Emera and NSPI, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera and NSPI substantially in the form attached hereto as **Schedule 6**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.
- (c) Nalcor Master Agreement - Nalcor may only assign this Agreement in connection with a contemporaneous assignment of the Nalcor Master Agreement to an assignee receiving Nalcor’s entire interest in the Nalcor Master Agreement.

- (d) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor shall be deemed to be an assignment of Nalcor Rights requiring the prior written consent of Emera and NSPI pursuant to **Section 15.1(a)**, which consent may be arbitrarily withheld.
- (e) Non-Permitted Assignment - Any assignment in contravention of this **Section 15.1** shall be null and void.

15.2 Emera Assignment Rights

- (a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Emera Rights**”) without the prior written consent of Nalcor and NSPI, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that Emera enters into an agreement with Nalcor and NSPI substantially in the form attached hereto as **Schedule 6**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an Emera Affiliate Assignee that would result in such Emera Affiliate Assignee no longer being an Affiliate of Emera shall be deemed to be an assignment of Emera Rights requiring the prior written consent of Nalcor and NSPI pursuant to **Section 15.2(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 15.2** shall be null and void.

15.3 Assignment by NSPI

NSPI shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing without the prior written consent of Nalcor and Emera, which consent may be arbitrarily withheld. Subject to the foregoing provision of this **Section 15.3**, NSPI may only assign this Agreement in connection with a contemporaneous assignment of the Nalcor Master Agreement to an assignee receiving NSPI's entire interest in the Nalcor Master Agreement.

15.4 Assignment – Tax Requirements

Notwithstanding any other provision in this Agreement, except as otherwise agreed to by the Parties in writing, a Party shall not assign any of its interest in this Agreement to another Person unless:

- (a) the Person is registered for HST purposes and provides the non-assigning Parties with its HST registration number in writing prior to such assignment; and
- (b) if the Person has a tax residency status that is different than the tax residency status of the assigning Party, the assigning Party has obtained the prior written approval of the non-assigning Parties of the proposed assignment to the Person.

ARTICLE 16 DISPUTE RESOLUTION

16.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 7** (the “**Dispute Resolution Procedure**”).
- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 16**, without prejudice to any Party’s rights pursuant to this Agreement.
- (c) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

16.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the “**Claiming Party**”) intending to assert a Claim against another Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.

- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If the Claiming Party and Recipient Party agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 17 REPRESENTATIONS AND WARRANTIES

17.1 Nalcor Representations and Warranties

Nalcor represents and warrants to Emera and NSPI that as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Nalcor and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) except as disclosed by it to Emera and NSPI in writing on or before the Effective Date, there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance hereof, except for (i) such consents, approvals,

authorizations, actions and filings that have been made or obtained prior to the Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;

- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement; and
- (h) it will have good and valid title, free of all Encumbrances, to all Energy delivered by it to NSPI at the Delivery Point pursuant to this Agreement.

17.2 Emera Representations and Warranties

Emera represents and warrants to Nalcor and NSPI that as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Emera and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a

material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;

- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement; and
- (h) it will have good and valid title, free of all Encumbrances, to all Energy delivered by it to NSPI pursuant to this Agreement.

17.3 NSPI Representations and Warranties

NSPI represents and warrants to Nalcor and Emera that as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of NSPI and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; and

- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 18
MISCELLANEOUS PROVISIONS

18.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Chief Executive Officer
Fax: (709) 737-1782

with a copy to:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Corporate Secretary
Fax: (709) 737-1782

To Emera:

Emera Inc.
1223 Lower Water Street
Halifax, NS
B3J 3S8
Attention: Corporate Secretary
Fax: (902) 428-6112

with a copy to:

NSP Maritime Link Incorporated
9 Austin Street
St. John's, NL
A1B 4C1
Attention: President
Fax: (709) 722-2083

To NSPI:

Nova Scotia Power Inc.
1223 Lower Water Street
Halifax, NS
B3J 3S8
Attention: Corporate Secretary
Fax: (902) 428-6112

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission and confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt; provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. A Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

18.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof (including the Initial EAA). Nalcor, Emera and NSPI agree that the Initial EAA has terminated as of the Effective Date. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement.

18.3 Relationship with Formal Agreements

For greater certainty, this Agreement does not modify any of the obligations of the Parties pursuant to the Formal Agreements.

18.4 Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

18.5 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

18.6 Announcements

No announcement with respect to this Agreement shall be made by any Party without the prior approval of the other Parties. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Parties before making any such announcement and gives due consideration to the views of the other Parties with respect thereto. The Parties shall use reasonable efforts to agree on the text of any proposed announcement.

18.7 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the solicitation for, or purchase and sale of, Energy or related products shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of another Party for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of another Party.

18.8 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

18.9 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and

enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

18.10 Time of the Essence

Time shall be of the essence.

18.11 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all Parties.

18.12 No Waiver

Any failure or delay of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party or Parties receiving such consent or approval.

18.13 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

18.14 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

18.15 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced

pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

18.16 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

18.17 Capacity of Nalcor

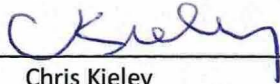
Nalcor is entering into this Agreement, and Emera and NSPI acknowledge that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown.

[Remainder of this page intentionally left blank.]

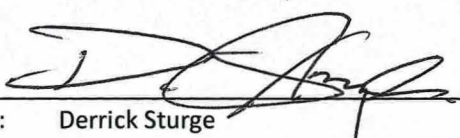
IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy,
in the presence of:

NALCOR ENERGY

By: 
Name: Chris Kieley
Title: Vice President, Strategic Planning
and Business Development


Name: BRAD COADY, P.ENG.

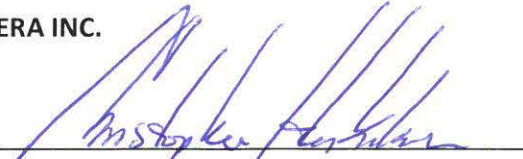
By: 
Name: Derrick Sturge
Title: Vice President, Finance and Chief
Financial Officer

We have authority to bind the corporation.

Executed and delivered by Emera Inc.,
in the presence of:


Name: Rene Gallant

EMERA INC.

By: 
Name: Chris Huskison
Title: President and Chief Executive Officer

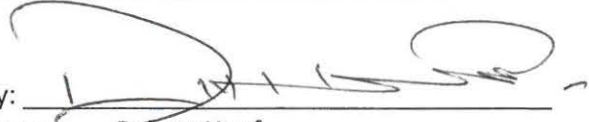
By: 
Name: Bruce Marchand
Title: Chief Legal Officer

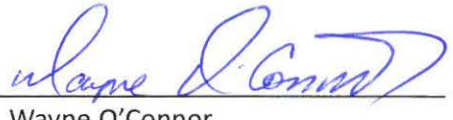
We have authority to bind the company.

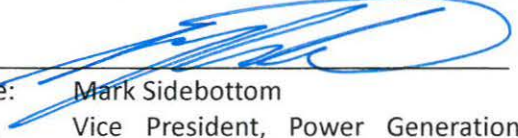
Executed and delivered by Nova Scotia
Power Incorporated, in the presence of:


Name: Rene Ballant

NOVA SCOTIA POWER INCORPORATED

By: 
Name: Robert Hanf
Title: President and Chief Executive Officer

By: 
Name: Wayne O'Connor
Title: Executive Vice President, Operations

By: 
Name: Mark Sidebottom
Title: Vice President, Power Generation
and Delivery

We have authority to bind the company.

ENERGY ACCESS AGREEMENT

SCHEDULE 1

SCHEDULING PROTOCOL

SCHEDULING PROTOCOL

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Schedule, except to the extent of a conflict with a definition set out below, the definitions set forth in the Transmission Agreements apply and in addition thereto:

“Anticipated Energy” means quantity of Available Energy that Nalcor reasonably anticipates it will be able to make available for delivery to NSPI at the Delivery Point during a specified period of time;

“Atlantic Prevailing Time” or **“APT”** means the time prevailing at the time, being either Atlantic Standard Time or Atlantic Daylight Time;

“Available Energy” has the meaning set forth in the EAA;

“Backstop Remedy” means the obligations of Emera pursuant to the NBTUA:

- (a) during the First Term, to purchase Energy and/or Capacity from Nalcor at the Delivery Point pursuant to Section 2.3(a) of the NBTUA;
- (b) during the First Term, to purchase Energy and/or Capacity from Nalcor at the NS-NB Border and re-sell such Energy and/or Capacity to Nalcor at the NB-Maine Border pursuant to Section 2.3(b) of the NBTUA; and
- (c) during the Subsequent Term, to purchase Energy from Nalcor at the Delivery Point pursuant to Section 3.2(b) of the NBTUA;

“Bayside Rights” has the meaning set forth in the NBTUA;

“Calendar Week” means each seven day period from Saturday to Friday, inclusive;

“Dispatch Plan” has the meaning set forth in **Section 4.1**;

“EAA” means the Energy Access Agreement between Nalcor, Emera and NSPI;

“E-Tags” means electronic tags compliant with current industry standards for the scheduling and transmission of Energy between or across electric utility company territories;

“Equivalent Rights” has the meaning set forth in the NBTUA or the MEPCO TRA, as the context requires;

“First Term” has the meaning set forth in the NBTUA;

“MEPCO Purchase Volumes” means the quantities of Energy and/or Capacity that Nalcor requires Emera to purchase from Nalcor during designated scheduling intervals pursuant to Section 2.5 of the MEPCO TRA;

“MEPCO TRA” means the MEPCO Transmission Rights Agreement between Nalcor and Emera;

“MEPCO Transmission Rights” has the meaning set forth in the MEPCO TRA;

“New England” or **“NE”** means the geographical area in which the bulk electric system is operated by ISO-NE, or its successor;

“NBTUA” means the New Brunswick Transmission Utilization Agreement between Nalcor and Emera;

“Nalcor Supplied Energy” has the meaning set forth in the EAA;

“Nalcor Master Agreement” has the meaning set forth in the EAA;

“NB Nominated Transmission Quantity” or **“NB-NTQ”** means the quantities of Energy and/or Capacity nominated by Nalcor in respect of designated scheduling intervals for transmission by Emera through the use of the Bayside Rights or the Equivalent Rights, as applicable, in accordance with the NBTUA;

“NS-NB Border” has the meaning set forth in the NBTUA;

“NS Nominated Transmission Quantity” or **“NS-NTQ”** means the quantities of Energy and/or Capacity nominated by Nalcor in respect of designated scheduling intervals for transmission by Emera pursuant to the Transmission Facilitation Service in accordance with the NSTUA;

“NSPI Solicitation” has the meaning set forth in the EAA;

“NSTUA” means the Nova Scotia Transmission Utilization Agreement between Nalcor and Emera;

“Off-Peak Hours” has the meaning set forth in the EAA;

“Off-Peak Periods” has the meaning set forth in the EAA;

“Peak Hours” has the meaning set forth in the EAA;

“Peak Periods” has the meaning set forth in the EAA;

“Prior Day” means:

- (a) in respect of scheduling flows pursuant to the NSTUA, the MEPCO TRA, or the EAA, the day prior to the intended Energy flow; and

- (b) in respect of scheduling flows pursuant to the NBTUA, the prior “Business Day” (as defined in the NBTUA) to the intended Energy flow;

“**System Operator**” means, as applicable, the Nova Scotia Power System Operator, the New Brunswick System Operator, ISO-NE or any respective successor system operator;

“**Subsequent Term**” has the meaning set forth in the NBTUA; and

“**Transaction**” has the meaning set forth in the Nalcor Master Agreement;

“**Transmission Agreements**” means the NSTUA, the NBTUA, and the MEPCO TRA.

1.2 Section References

Unless otherwise indicated, all references in this Schedule to a “Section” followed by a number and/or a letter refer to a specified Section in this Schedule.

1.3 Interpretation Provisions

Section 1.2(i) and Section 1.2(j) of the Transmission Agreements and the EAA shall not apply to this Schedule.

SECTION 2 - PURPOSE AND OVERVIEW

2.1 Purpose

The purpose of this Schedule is to provide the protocol for communications between Nalcor and Emera, or Nalcor and NSPI, as applicable, that are necessary to facilitate:

- (a) the scheduling of the delivery of Nalcor Supplied Energy from time to time by Nalcor to NSPI pursuant to the EAA and the Nalcor Master Agreement, including by establishing the process by which those Parties’ respective obligations to deliver and receive specific quantities of Energy during the Peak Periods and Off-Peak Periods of given calendar months are ultimately translated into day-ahead delivery schedules; and
- (b) the scheduling of Energy for Nalcor under the Transmission Agreements by facilitating the use by or assignment to Nalcor of Transmission Rights under the Transmission Agreements so that it may participate in electricity markets beyond NS (including those in NB and NE) by establishing the scheduling procedures by which Emera will schedule and provide transmission service in accordance with the Transmission Agreements.

2.2 Ownership of Nalcor Throughput Energy

Except as contemplated by Section 2.3(b) of the NBTUA, Nalcor will retain ownership and title to the Energy transmitted from NL through to Nalcor’s final point of sale for each transaction.

2.3 E-Tags

Unless Nalcor has otherwise advised Emera, Nalcor shall be responsible for the creation of applicable E-Tags. Emera shall create applicable E-Tags if requested to do so by Nalcor.

SECTION 3 – NALCOR SUPPLIED ENERGY UNDER THE EAA

3.1 EAA Scheduling Obligations

Sections 3.2 and 3.3 apply in respect of any relevant periods during which Nalcor and NSPI have respective obligations to deliver and receive Nalcor Supplied Energy under the EAA and any applicable NSPI Solicitation.

3.2 Rolling Four Week Schedule

- (a) By no later than 00:00:00 (midnight) APT of each Tuesday, Nalcor shall provide a report to NSPI in respect of the subsequent four full Calendar Weeks, advising of:
 - (i) for each such Calendar Week, the minimum and maximum cumulative quantities of Anticipated Energy in respect of (A) the Peak Hours of such Calendar Week, and (B) the Off-Peak Hours of such Calendar Week; and
 - (ii) for each hour during each such Calendar Week, the minimum and maximum Anticipated Energy.
- (b) Working cooperatively and in good faith, Nalcor and NSPI shall, by no later than 00:00:00 (midnight) APT of each Wednesday, agree upon a schedule for the delivery of Nalcor Supplied Energy in each hour of the subsequent four full Calendar Weeks (each, a “**Four Week Schedule**”). Subject to the terms and conditions of the EAA and any NSPI Solicitation governing the deliveries, and provided that Nalcor remains able to deliver such Energy, at NSPI’s option, the Four Week Schedule may provide for the delivery of Energy amounts up to the maximum Anticipated Energy amounts established by **Sections 3.2(a)(i) and 3.2(a)(ii)**.

3.3 One Week Schedule

The first week of each Four Week Schedule (the “**One Week Schedule**”) will establish the final delivery schedule for Nalcor Supplied Energy during each day of such week, and day-ahead schedules will be implemented accordingly pursuant to **Steps 1B(a) and 2B in Section 4.1**. The One Week Schedule will only be changed by mutual agreement of Nalcor and NSPI, with each Party acting in its own interests.

3.4 Intra-Day EAA Scheduling Changes

Following the issuance by NSPI of a confirmation pursuant to **Step 2B in Section 4.1**, NSPI may request a change to the confirmed delivery schedule for the applicable day of delivery by providing such requests at least 60 minutes ahead of the earliest hour in respect of a change is being requested. Any resulting changes to the previously-confirmed delivery schedule will be by

mutual agreement of Nalcor and NSPI, with each Party acting in its own interests, and will be formalized by means of communication in accordance with **Section 4.2**. Unless a change to the delivery schedule is confirmed by this means, the original schedule for the applicable day will prevail. Each agreed-upon change to the delivery schedule that is so confirmed will be deemed to be an amendment to the applicable Transaction.

SECTION 4 - PROCEDURE AND STANDARD NOTIFICATION TIMELINES

4.1 Scheduling Procedures

The following scheduling procedures for daily scheduling shall apply when Nalcor Schedules the transmission of Energy pursuant to the Transmission Agreements and when Nalcor and NSPI schedule the delivery and receipt of Nalcor Supplied Energy:

Step 1A Scheduling Request - No later than 0700 APT of the Prior Day, Nalcor will provide Emera with a schedule of its transmission service requirements and the MEPCO Purchase Volumes election for all hours of the applicable day(s) in respect of each of the Transmission Agreements (the “**Dispatch Plan**”) containing the following elements:

- (a) in respect of the NSTUA, the requested NS-NTQ;
- (b) in respect of the NBTUA:
 - (i) the time period and associated MW amount for which Nalcor requires an assignment of the Bayside Rights in accordance with Section 2.1(b)(i) of the NBTUA; and/or
 - (ii) the requested NB-NTQ;
- (c) in respect of the MEPCO TRA:
 - (i) the time period and associated MW amount for which Nalcor requires an assignment of the MEPCO Transmission Rights in accordance with Section 2.3(a) of the MEPCO TRA; or
 - (ii) the requested MEPCO Purchase Volumes; and
- (d) if Nalcor requires Emera to create the applicable E-Tags, a direction to Emera to create the applicable E-Tags.

Step 1B Confirmation of Nalcor Supplied Energy - By no later than 0700 APT of the Prior Day, Nalcor will:

- (a) provide confirmation to NSPI of the agreed-upon hourly flows of Nalcor Supplied Energy for the following day, as established by the applicable One Week Schedule; and

- (b) if it intends to exercise its right to postpone delivery of Energy pursuant to Section 3.6 of the EAA, notify NSPI of same in accordance with such provision.

Step 2A Acceptance of Dispatch Plan - By no later than 1015 APT of the Prior Day, Emera will either:

- (a) accept the Dispatch Plan in full and notify Nalcor of such acceptance; or
- (b) notify Nalcor that it is unable to accept the Dispatch Plan. In such notification Emera shall:
 - (i) advise Nalcor as to the reason for its inability to accept the Dispatch Plan, and
 - (ii) in respect of the NSTUA, NBTUA and MEPCO TRA, as may be applicable, advise Nalcor as to the reduced amount(s) that can be transmitted or assigned, as applicable.

Step 2B NSPI Confirmation - By no later than 1015 APT of the Prior Day, NSPI will provide confirmation to Nalcor of its acceptance of the agreed-upon hourly flows of Nalcor Supplied Energy for the following day, as established by the applicable One Week Schedule.

Step 3 Schedule Modification and Backstop Remedies - If Emera has given Nalcor notice pursuant to **Step 2A(b)**, then by no later than 1030 APT:

- (a) Modified Dispatch Plan - Nalcor shall advise Emera as to whether or not to proceed with a modified Dispatch Plan. If so proceeding:
 - (i) the notice shall set out a modified Dispatch Plan containing the elements set forth in **Step 1A**, adjusted to address the limitations set out in **Step 2A(b)(ii)**;
 - (ii) if Emera has advised Nalcor pursuant to **Step 2A(b)(ii)** as to the availability of a reduced amount of the NS-NTQ, the modified Dispatch Plan shall specify either: (A) this amount, or (B) nil;
 - (iii) subject to any limitations set out in **Step 2A(b)(ii)**, the modified Dispatch Plan may adjust the amount(s) to be transmitted or assigned in respect of the NBTUA and MEPCO TRA; and
 - (iv) upon communication of the modified Dispatch Plan to Emera pursuant to this **Step 3(a)**, the modified Dispatch Plan shall be accepted by Emera and confirmation of the scheduling associated with the modified Dispatch Plan shall be communicated to Nalcor in accordance with **Step 5**.
- (b) Election of Backstop Remedy - If Nalcor is entitled to a Backstop Remedy, Nalcor will provide notice to Emera as to which, if any, Backstop Remedy it will require Emera

to execute during the applicable day. Such notice will specify Nalcor's election in respect of the Backstop Remedy, as follows:

- (i) Purchase at the Delivery Point pursuant to Section 2.3(a) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy and/or Capacity to be purchased by Emera at the Delivery Point;
- (ii) Purchase and resale pursuant to Section 2.3(b) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy and/or Capacity to be purchased by Emera at the NS-NB Border and to be resold by Emera to Nalcor at the NB-Maine Border; or
- (iii) Purchase at the Delivery Point pursuant to Section 3.2(b) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy to be purchased by Emera at the Delivery Point.

Step 4 E-Tag Creation - By no later than 1030 APT of the Prior Day, Nalcor will, or, if directed by Nalcor pursuant to **Step 1A(d)**, Emera will, create the E-Tags associated with the scheduling requests contained in the Dispatch Plan and the Nalcor Supplied Energy, as confirmed by NSPI pursuant to **Step 2B**.

Step 5 Implementation of Dispatch Plan – The Energy to be transmitted through NS and NB, in respect of which Emera has accepted an original Dispatch Plan in accordance with **Step 2A(a)** or a modified Dispatch Plan in accordance with **Step 3(a)(iv)**, as applicable, shall be the “**Confirmed NS-NTQ Energy**” and the “**Confirmed NB-NTQ Energy**” respectively. Emera will by no later than 1045 APT of the Prior Day, as applicable:

- (a) reserve the transmission service associated with the Confirmed NS-NTQ Energy and the Confirmed NB-NTQ Energy, as applicable, and provide Nalcor with the associated transmission reservation numbers;
- (b) assign to Nalcor the Bayside Rights;
- (c) assign to Nalcor the MEPCO Transmission Rights; and
- (d) confirm acceptance to Nalcor of the specified MEPCO Purchase Volumes.

Step 6 Confirmation of Scheduling of Backstop Remedy - By no later than 1100 APT of the Prior Day, if Nalcor elects a Backstop Remedy pursuant to **Step 3(b)**, Emera will provide confirmation to Nalcor of the scheduling associated with the Backstop Remedy elected by Nalcor.

Step 7 Confirmation of Energy Flows - Nalcor will notify Emera and, as applicable, NSPI (in respect of Nalcor Supplied Energy) of its final scheduled Energy flows no later than 1400 APT of the Prior Day, except in the case of Energy flows destined to NE and any other markets of similar design, in which case such final scheduled Energy flows will be confirmed

immediately on notification from the applicable System Operator to market participants of accepted flows. The issuance of each such confirmation by Nalcor to NSPI will formalize a Transaction in respect of the quantities of Nalcor Supplied Energy identified in the confirmation.

4.2 Communications

Unless otherwise agreed to by the Parties, communications between the Parties in respect of **Sections 3.2, 3.3 and 3.4** and the Steps in **Section 4.1** shall be by e-mail or on electronically recorded phone-lines.

4.3 Changes to the Energy Market

The standard notification timelines set out herein are based on the current deadlines of the applicable energy markets. Should the energy markets change their structure and/or timelines, these standard notification timelines shall be updated accordingly as the Parties may mutually agree or, failing agreement, the matter shall be resolved as a Specified Dispute. Section 1.2(m) of the Agreement applies to this **Section 4.3**.

4.4 Equivalent Rights

The Parties acknowledge that at the Effective Date of the Transmission Agreements, the exact nature of the Equivalent Rights that will be provided by Emera to Nalcor pursuant to Section 3.1 of the NBTUA during the Subsequent Term, and that may be provided pursuant to each of Section 2.1(c) of the NBTUA and Section 2.3(c) of the MEPCO TRA, is not known. Therefore, upon the provision of Equivalent Rights by Emera to Nalcor in accordance with any of the foregoing Transmission Agreement provisions, the Parties agree to amend this Scheduling Protocol in order to provide for reasonable scheduling procedures that address the scheduling requirements applicable to such Equivalent Rights. Failing agreement, the matter shall be resolved as a Specified Dispute. Section 1.2(m) of the Agreement applies to this **Section 4.4**.

4.5 Minimum Timelines

Notwithstanding that this Scheduling Protocol describes minimum timelines for the day-ahead scheduling of Transmission Rights pursuant to the Transmission Agreements, nothing herein shall prevent Nalcor from providing its scheduling requirements pursuant to the Transmission Agreements for time periods with durations of longer than one day.

4.6 Nalcor Rights Preserved

Nothing in this Scheduling Protocol affects the rights and remedies available to Nalcor in the case of an Emera Default pursuant to any of the Transmission Agreements.

ENERGY ACCESS AGREEMENT

SCHEDULE 2

NALCOR MASTER AGREEMENT

Master Power Purchase & Sale Agreement



MASTER POWER PURCHASE AND SALES AGREEMENT

TABLE OF CONTENTS

GENERAL TERMS AND CONDITIONS	17
ARTICLE ONE: GENERAL DEFINITIONS	17
ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS	22
2.1 Transactions	22
2.2 Governing Terms	22
2.3 Confirmation	22
2.4 Additional Confirmation Terms.....	23
2.5 Recording.....	23
ARTICLE THREE: OBLIGATIONS AND DELIVERIES	23
3.1 Seller's and Buyer's Obligations	23
3.2 Transmission and Scheduling	23
3.3 Force Majeure	24
ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE	24
4.1 Seller Failure	24
4.2 Buyer Failure	24
ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.....	24
5.1 Events of Default	24
5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.....	26
5.3 Net Out of Settlement Amounts.....	26
5.4 Notice of Payment of Termination Payment	26
5.5 Disputes With Respect to Termination Payment	26
5.6 Closeout Setoffs	27
5.7 Suspension of Performance.....	27
ARTICLE SIX: PAYMENT AND NETTING	27
6.1 Billing Period	27
6.2 Timeliness of Payment.....	28
6.3 Disputes and Adjustments of Invoices.....	28
6.4 Netting of Payments.....	28
6.5 Payment Obligation Absent Netting	28
6.6 Security	29
6.7 Payment for Options	29
6.8 Transaction Netting.....	29
ARTICLE SEVEN: LIMITATIONS.....	29
7.1 Limitation of Remedies, Liability and Damages	29

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS	30
8.1 Party A Credit Protection.....	30
8.2 Party B Credit Protection.....	32
8.3 Grant of Security Interest/Remedies.....	33
ARTICLE NINE: GOVERNMENTAL CHARGES.....	34
9.1 Cooperation.....	34
9.2 Governmental Charges.....	34
ARTICLE TEN: MISCELLANEOUS	34
10.1 Term of Master Agreement.....	34
10.2 Representations and Warranties.....	34
10.3 Title and Risk of Loss	36
10.4 Indemnity	36
10.5 Assignment	36
10.6 Governing Law	36
10.7 Notices	37
10.8 General.....	37
10.9 Audit	37
10.10 Forward Contract	38
10.11 Confidentiality	38
SCHEDULE M: GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEMS	39
SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS.....	43
EXHIBIT A: CONFIRMATION LETTER.....	50

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: April 13, 2015 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name "**NALCOR ENERGY**" or "Nalcor" or
"Party A"

All Notices:

Street: Hydro Place, 500 Columbus Drive

P.O. Box 12400

City: St. John's, Newfoundland

Postal Code: A1B 4K7

Duns: 24-373-2281

GST Number: 837364611

Legal Notices

Attn: General Counsel and Corporate Secretary
(c/o Wayne Chamberlain)

Phone: (709) 737-1443

Facsimile: (709) 737-1782

With a copy to:

Attn: General Manager, Nalcor Energy
Marketing (c/o Greg Jones)

Phone: (709) 737-1246

Facsimile: (709-737-1250

Invoices:

Attn: Controller, Energy Investments (c/o
Carmel Finlay)

Phone: (709) 737-4986

Facsimile: (709) 570-5927

Name "**NOVA SCOTIA POWER
INCORPORATED**" or "NSPI" or
"Party B"

All Notices:

Street: 1223 Lower Water Street

P.O. Box 910

City: Halifax, Nova Scotia

Postal Code: B3J 2W5

Duns: 20-443-2637

GST Number: 119314938

Legal Notices

Attn: Corporate Secretary

Phone: (902)428-6096

Facsimile: (902)428-6171

With a copy to:

Attn: GM Regulatory and Legal Services

Phone: (902)428-6258

Facsimile: (902)428-4006

Invoices:

Attn: Power Invoices & Payments, NSPI (c/o
Corporate Accountant)

Phone: (902) 428-6288

Facsimile: (902) 428-7164

Scheduling:

Attn: NLH Energy Control Center
Phone: (709)737-1958
Facsimile: (709)737-1979

Payments:

Attn: Controller, Energy Investments (c/o
Carmel Finlay)
Phone: (709) 737-4986
Facsimile: (709) 570-5927

Scheduling:

Attn: NS Power Desk Phone:
(902) 474-2122 (Real Time)

Phone: (902) 474-7816 (Day Ahead)
Facsimile: (902) 428-7164

Payments:

Attn: Attn: Power Invoices & Payments,
NSPI (c/o Corporate Accountant)
Phone: (902) 428-6288
Facsimile: (902) 428-7164

Wire Transfer: (U.S. Funds)

BNK: Bank of Nova Scotia, NY, NY

ABA: 026-002-532

TRANSIT: 34033

ACCT: 8839212

Wire Transfer: (Canadian Funds)

BNK: Bank of Nova Scotia, St. John's, NL

TRANSIT: 34033

ACCT: 0014516

Wire Transfer: (U.S. Funds)

For payments made by banks **NOT located in the USA:**

Beneficiary: Nova Scotia Power Inc.

Beneficiary Address: 1223 Lower Water Street,
Halifax, N.S. B3J 3S8

Account Number: 33993 85029 19

Beneficiary Bank:

The Bank of Nova Scotia
Halifax Business Service Centre
5251 Duke Street, Ste 700
Halifax, NS B3J 1P3

Transit: 33993 – 002

Swift Code: NOSCCATT

For payments made by banks **which are located in the USA:**

Beneficiary: Nova Scotia Power Inc.

Beneficiary Address: 1223 Lower Water Street,
Halifax, N.S. B3J 3S8

Account Number: 33993 85029 19

Beneficiary Bank:

The Bank of Nova Scotia
Halifax Business Service Centre
C/O International Banking Division
44 King St. West

Toronto, ON M5H 1H1

Transit: 33993 – 002

Swift Code: NOSCCATT

Wire Transfer: (Canadian Funds)

Beneficiary: Nova Scotia Power Inc.

Beneficiary Address: 1223 Lower Water Street,
Halifax, N.S. B3J 3S8

Account Number: 70003 00001 16

Beneficiary Bank: The Bank of Nova Scotia
Halifax Business Centre

5251 Duke Street, Ste 700
Halifax, N.S. B3J 1P3
Transit: 33993 – 002
Swift Code: NOSCCATTHFX

Credit and Collections:

Attn: Controller, Energy Investments (c/o
Carmel Finlay)
Phone: (709)737-4986
Facsimile: (709)570-5927

Credit and Collections:

Attn: Credit Group, Enterprise Risk
Management, Emera
Phone: (902) 474-2115 or (902) 428-6788

Email: credit.group@nspower.ca

With additional Notices of an Event of Default
or Potential Event of Default to:

Attn: Treasury & Risk Management (c/o
Andrew Sinnott)
Phone: (709) 778-6652
Facsimile: (709)737-1901

With additional Notices of an Event of
Default or Potential Event of Default to:

Attn: Corporate Secretary
Phone: 902-428-6096
Fax: (902) 428-6171
With a copy to:
Attn: Enterprise Risk Management, Emera
Phone: (902) 474-2115 or (902) 474-7866

Email: credit.group@nspower.ca

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff	Tariff	<u>N/A</u>	Dated _____	Docket Number _____
Party B Tariff	Tariff	<u>N/A</u>	Dated _____	Docket Number _____

Article Two

Transaction Terms and Conditions ☒ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☐ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies ☒ Cross Default for Party A:
☐ Party A: _____ Cross Default Amount : USD \$50 Million

☐ Other Entity:

☒ Cross Default for Party B:

☐ Party B: _____ Cross Default Amount : USD \$50 Million

☐ Other Entity:

5.6 Closeout Setoff

☐ Option A (Applicable if no other selection is made.)

☒ Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: Section 5.6 Closeout Setoff is amended by deleting the phrase “or any of its Affiliates” after the phrase “the Defaulting Party” in both the fourth and sixth lines of this subsection.

☐ Option C (No Setoff)

Article Eight

Credit and Collateral Requirements 8.1 Party A Credit Protection:
(a) Financial Information:

☐ Option A

☐ Option B Specify:

☒ Option C Specify: Following reasonable written demand, Party B shall deliver (i) when available, a copy of its audited consolidated financial statements for such

fiscal year and (ii) when available, a copy of its or its Guarantor's quarterly report; if such requested document is not available on the World Wide Web at www.nspower.ca, www.sedar.com or any successor or applicable website. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles ("GAAP") or, when implemented in Canada, international financial reporting standards ("IFRS").

(b) Credit Assurances:

☐ Not Applicable
☒ Applicable

(c) Collateral Threshold:

☐ Not Applicable
☒ Applicable

If applicable, complete the following:

Party B Collateral Threshold: The amount set forth below opposite the classification that is one classification higher than that applicable to the lowest Credit Rating of Party B; provided, however, that Party B's Collateral Threshold shall be Zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

<u>S & P Credit Rating</u>	<u>Moody's Credit Rating</u>	<u>DBRS Credit Rating</u>	<u>Collateral Threshold</u>
AA and above	Aa2 and above	AA and above	\$25,000,000
AA-	Aa3	AA Low	\$22,500,000
A+	A1	A (high)	\$15,000,000
A	A2	A	\$12,500,000
A-	A3	A (low)	\$10,000,000
BBB+	Baa1	BBB (high)	\$7,500,000
BBB	Baa2	BBB	\$5,000,000
BBB-	Baa3	BBB (low)	\$2,500,000
BB+ and below	Ba1 and below	BB (high) and below	Zero

Party B Independent Amount:

Party B Rounding Amount: USD \$10,000

(d) Downgrade Event:

- ☐ Not Applicable
☒ Applicable

If applicable, complete the following:

- ☒ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P, Baa3 from Moody's or BBB (Low) from DBRS or if Party B is not rated by at least one of S&P, Moody's or DBRS.
- ☐ Other:

(e) Guarantor for Party B: N/A

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

- ☐ Option A
☐ Option B Specify:
☒ Option C Specify: Following reasonable written demand, Party A shall deliver (i) when available, a copy of its audited consolidated financial statements for such fiscal year and (ii) when available, a copy of its quarterly report; if such requested document is not available on the World Wide Web at www.nalcorenergy.com or any successor or applicable website. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles ("GAAP") or, when implemented in Canada, international financial reporting standards ("IFRS").

(b) Credit Assurances:

- ☐ Not Applicable
☒ Applicable

(c) Collateral Threshold:

- ☒ Not Applicable
☐ Applicable

If applicable, complete the following:

Party A Collateral Threshold: \$_____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party A Independent Amount:

Party A Rounding Amount: USD\$_____

(d) Downgrade Event:

☒ Not Applicable

☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's or Party A's Guarantor, as applicable, Credit Rating falls below BBB- from S&P, Baa3 from Moody's or BBB(Low) from DBRS or if Party A is not rated by at least one of S&P, Moody's or DBRS.

☐ Other:

Specify:_____

(e) Guarantor for Party A: N/A

Guarantee Amount: USD\$ N/A

Article Ten

Confidentiality

☒ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System

☐ Party B is a Governmental Entity or Public Power System

☐ Add Section 3.6. If not checked, inapplicable

☐ Add Section 8.6. If not checked, inapplicable

Other Changes Specify, if any:

Numbered Sections of the Master Agreement shall be amended as described below or replaced by the following like numbered sections, or where no corresponding section exists in the Master Agreement, the following sections shall be considered additions to the Master Agreement:

ARTICLE ONE: GENERAL DEFINITIONS

Add, amend or replace the following definitions, as applicable, as follows:

1.3 “Bankrupt” – is amended by adding the phrase, “which is not demonstrated to be without merit and is not vacated within three (3) Business Days” after the words, “commenced against it” in subsection (i).

1.4 “Business Day” – means any day except a Saturday, Sunday, or a statutory holiday in St. John’s, Newfoundland and Labrador or Halifax, Nova Scotia on which Canadian chartered banks are not open for business.

1.8 “Claims” – is amended by adding the word, “reasonable” before “attorneys’ fees” on the third line; and adding, “acting reasonably” after the words “settlement or otherwise” on the fourth line.

1.10 “Contract Price” – means the agreed price in the agreed currency (which shall be in \$USD unless otherwise specified) for the purchase and sale of the Product pursuant to a Transaction.

1.12 “Credit Rating” - means, with respect to any entity, the lowest of the ratings then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or any issuer or corporate rating by S&P, Moody’s, DBRS or any other rating agency agreed by the Parties from time to time.

1.22 “FERC” – The corresponding “FERC” definition is deleted.

1.26 “Interest Rate” – add “(i) for U.S. currency amounts” after the words, “for any date” in the first line; and add to the end of the definition, “and (ii) for Canadian currency amounts, the lesser of (a) per annum rate of interest equal to the prime lending rate as may from time to time be charged by the Canadian Imperial Bank of Commerce, in Toronto, or its successor, to its most credit-worthy customers on the last banking day of calendar month covered by the invoice, plus two percent (2%) per annum; or (b) the maximum rate permitted by law. “

1.27 “Letter(s) of Credit” – add after the words, “U.S commercial bank”, the words, “Schedule I Canadian Chartered Bank”.

1.31 “NERC Business Day” – The corresponding “NERC Business Day” definition is deleted.

1.45 “Performance Assurance” – is amended by adding the words, “acting reasonably” after “Requesting Party”.

1.50 “Recording” – reference to “Section 2.4” shall be replaced by reference to “Section 2.5”.

1.51 “Replacement Price” – add the words “for delivery” immediately before the phrase “at the Delivery Point” in the second line and replace the words “or at Buyer’s option” on the fifth line of the definition with the words: “or, absent a purchase”.

1.53 “Sales Price” – add the words “for delivery” immediately before the phrase “at the Delivery Point” in the second line, replace the words “or at Seller’s option” on the fifth line: with the words: “ or, absent a sale” and insert the words “provided, however, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0)” after the words “”commercially reasonable manner” in the sixth line.

1.56 “Settlement Amount” – delete the words “U.S. Dollars” in the second line and replace them with the words: “the currency of such Transaction”.

1.62 “DBRS” – means Dominion Bond Ratings Service or its successor.

1.63 “GST” – means Goods and Services Tax imposed pursuant to the Excise Tax Act (Canada) as amended, restated, replaced, re-enacted or otherwise modified from time to time and includes Harmonized Sales Tax and also including any similar tax imposed by a province such as Quebec.

1.64 “Letter of Credit Default” shall mean, with respect to any outstanding Letter of Credit, that a party (“Y”) fails to maintain any outstanding Letter of Credit when required by a party (“X”) to do so in accordance with this Agreement, including, without limitation, as a result of the occurrence of any of the following events:

- (i) the issuer of a Letter of Credit:
 - (a) fails to comply with or perform its obligations under such Letter of Credit;
 - (b) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity or enforceability of, such Letter of Credit;
 - (c) becomes Bankrupt; or
 - (d) fails to maintain the Credit Rating set out herein;
- (ii) a Letter of Credit terminates or fails or ceases to be in full force and effect, without the prior written permission of X, at any time until 10 days beyond the final payment date of the transactions for which it was issued, without having been replaced by another Performance Assurance suitable to X;
- (iii) Y fails to renew any outstanding Letter of Credit at least thirty (30) days prior to its expiry, without having been replaced by another form of Performance Assurance suitable to X;

Provided, however, that no Letter of Credit Default shall occur in any event with respect to any outstanding Letter of Credit after the time such Letter of Credit is permitted or required to be expired, cancelled or returned to Y in accordance with the terms of this Master Agreement.

1.65 “Energy Access Agreement” or “EAA” – means the Energy Access Agreement of April 13, 2015 between Nalcor, NSPI and Emera Inc.

1.66 “Person” - includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.4 Additional Confirmation Terms – remove the words “either orally or” on the seventh line immediately after the words “unless agreed to”, add the words “and upon execution” immediately after the words “in writing”, and replace the word “the” before the word “Parties” on the seventh line with the word “both”.

2.5 Recording – on the first line remove the words: “Unless a party expressly objects to a Recording (defined below) at the beginning of a telephone conversation,” begin the resulting sentence with “Each” and add the words “, provided that such Recording would be admissible in accordance with the applicable law of such proceeding or action, provided, further, the parties agree not to contest or assert any defense to the validity or enforceability of Transactions entered into pursuant to this Master Agreement solely under laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound” after the words “Master Agreement” at the end.

ARTICLE THREE: OBLIGATIONS AND DELIVERY

3.3 “Force Majeure” – Delete the words “, in whole or part,” from line 2. Insert “to such extent” between “shall” and “be” in line 4. In line 7, replace “remedy” with “attempt to overcome the effects of” - and add the words “; provided, however, nothing contained herein shall be construed to require a Claiming Party to settle any strike or

labor dispute.” after the words “with all reasonable dispatch” on the seventh and eight lines and add the words “The Claiming Party shall provide the non-claiming Party notice of the Claiming Party’s best estimate of the duration of the Force Majeure.” as the last sentence in this Section.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 “Seller Failure.” – on line 2, insert “, by Section 3.3,” immediately after the word “Product” and capitalize the first letter of the word “schedule” wherever it is used in the section and immediately after “and/or deliver” add “or cause to be delivered” and immediately after “Seller shall pay Buyer” add “as liquidated damages and not as a penalty” and immediately after “calculation of such amount” on the last line, add the words “and the origin of the values used in said calculation which must be derived from a commercially reasonable source”.

4.2 “Buyer Failure.” – on line 2, insert “, by Section 3.3,” immediately after the word “Product” and capitalize the first letter of the word “schedule” wherever it is used in the section and immediately after “and/or receive” add “or cause to be received” and immediately after “Buyer shall pay Seller” add “as liquidated damages and not as a penalty” and immediately after “calculation of such amount” on the last line, add the words “and the origin of the values used in said calculation which must be derived from a commercially reasonable source”.

4.3 “Duty to Mitigate” – The following provision is added as a new Section 4.3: “Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of the Agreement.”

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.

5.1(a) “Events of Default” – the phrase “three (3) Business Days” is changed to “five (5) Business Days”.

5.1(b) “Events of Default” – the word “intentionally” is added before “false or misleading”; and “misleading” is followed by “or willfully blind.”

5.1(g) “Events of Default” – the phrase “or becoming capable at such time of being declared,” on the eighth line of the Section shall be deleted. Add the phrase “(after giving effect to any applicable notice requirement or grace period)” after the words “occurrence and continuation” on the second line. Add the following provision after the words “ (as specified in the Cover Sheet)” at the end of the Section 5.1(g): “provided, an Event of Default shall not occur under this Section 5.1(g) if, as demonstrated to the reasonable satisfaction of the other Party, the Event of Default or the failure to pay is the result of a failure to pay caused by an error or omission of an administrative or operational nature, funds were available to such Party to enable it to make the relevant payment when due, and such relevant payment is made within three (3) Business Days following receipt of written notice from the party to whom the payment is owed.”

5.1(i) “Events of Default” - The following provision is added as a new Section 5.1(i):

“(i) a Letter of Credit Default occurs with respect to such Party without being cured by the end of the second Business Day after such occurrence.”

5.2 “Declaration of an Early Termination Date and Calculation of Settlement Amounts” - is amended by: (1) in the fifth line, deleting the words “an early termination” and replacing them with the word “a”, and (2) adding the following as new third and fourth sentences: “The remedy provided for by this Section 5.2 shall be in addition to any other legal or equitable remedies to which the Non-Defaulting Party may be entitled. For the avoidance of doubt, and notwithstanding the references in this Master Agreement to “Early Termination Date” and like terms, this Article Five will not be construed as entitling the Non-Defaulting Party to terminate this Master Agreement if an Event of Default has occurred.”

5.4 “Notice of Payment of Termination Payment” - is amended by adding the following as a new last sentence of the section:

“Notwithstanding any provision to the contrary contained in this Agreement, however, the obligations of the Non-Defaulting Party to pay any amount to the Defaulting Party under this Article 5 shall not arise, and the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under this Article 5 unless and until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or its Affiliate under this Agreement or any other agreement have been fully and finally satisfied and performed.”

5.7 Suspension of Performance. – In subsection (i) delete “NERC” and replace “early” with “Early”.

5.8 Additional Rights on Default. - The following provision is added as a new Section 5.8:

"5.8 Without limitation to any other rights or remedies under this Agreement or otherwise, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall also be entitled to take any or all of the following actions without prior Notice to the Defaulting Party: (i) draw on or apply any Performance Assurance or other collateral to satisfy the obligations of the Defaulting Party to the Non-Defaulting Party with respect to any Settlement Amount; (ii) exercise all rights and remedies available to a secured party under the personal property legislation or uniform commercial code of any applicable jurisdiction; (iii) liquidate, free from any claim or right of the Defaulting Party, any Performance Assurance or other collateral, and apply the proceeds thereof to the obligations of the Defaulting Party to the Non-Defaulting Party with respect to any Settlement Amount, in such manner as it sees fit in its sole discretion; (iv) net against or deduct from any Settlement Amount owed by the Non-Defaulting Party to the Defaulting Party any Performance Assurance or other collateral held by the Defaulting Party; and/or (v) set off and net against or deduct from any Settlement Amount owed by the Non-Defaulting Party to the Defaulting Party any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Non-Defaulting Party and the Defaulting Party.

Amounts that are setoff or netted against, deducted from, or applied to, obligations under this Section may be converted by the Non-Defaulting Party into any currency in which any obligation owed is denominated at the rate of exchange at which the Non-Defaulting Party, acting in a reasonable manner and in good faith, would be able to purchase the relevant amount of the currency being converted.

Each of the parties represents and acknowledges that the rights set forth in this Section are an integral part of this Agreement between the parties and that without such rights the parties would not be willing to enter into the Agreement. Each of the parties further acknowledges that it is entering into the Agreement on behalf of itself as principal."

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.3 Grant of Security Interest/Remedies. Section 8.3 is deleted and replaced with the following provision:

To the extent a Party delivers (each such delivering party, a "Pledgor") Performance Assurance hereunder in the form of cash or cash equivalent to the other Party (each such other Party, a "Secured Party"), such Pledgor hereby grants, pledges and assigns to such Secured Party, as security for the payment

and performance of such Pledgor's obligations owing to the Secured Party under this Agreement, a present and continuing security interest in, and lien on (and right of setoff against), all such cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and such Pledgor agrees to take such action as such Secured Party reasonably requires in order to perfect such Secured Party's security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party that is a Secured Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party that is a Pledgor in the possession of the Non-Defaulting Party that is a Secured Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Non-Defaulting Party that is a Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party that is a Pledgor, including any equity or right of purchase or redemption by the Defaulting Party that is a Pledgor. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under this Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return to the Pledgor any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.2 Governmental Charges. – In the first sentence replace “Seller shall pay or cause to be paid all taxes” with “Seller shall pay or cause to be paid, or reimburse Buyer if Buyer has paid, all taxes”. In the second sentence replace “Buyer shall pay or cause to be paid” with “Buyer shall pay or cause to be paid, or reimburse Seller if Seller has paid,”

9.3 GST. – The Contract Price to be paid hereunder does not include any GST payable by Buyer in respect of Product delivered hereunder. If any GST is payable in connection with Product purchased hereunder, such GST shall be paid by Buyer to Seller, , and Seller shall remit such GST as required by law. If any GST is payable in connection with payments to be made either under this Agreement or in connection with a breach hereof, the Party obligated to make the payment shall also pay the GST to the Party entitled to receive the payment, and the recipient shall remit such GST to the Crown. All of the rules of this clause shall also be applicable to all other refundable taxes, or any similar taxes or replacement value added tax.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement – Immediately after the words “provided, however, that” in the third line, insert the words: “this Master Agreement shall not be terminated by either Party while the Energy Access Agreement is in force and effect and, provided further that”.

10.2 Representations and Warranties – Immediately after the words “On the Effective Date and the date of entering into each Transaction” insert the words: “and at all times until the termination of this Agreement”.

10.2(vi) Representations and Warranties – is deleted and replaced with the following: "except as otherwise disclosed by it in writing to the other Party on or prior to the Effective Date, there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform

its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3).”

10.2 (ix) Representations and Warranties – is deleted.

10.2(xiii) Representations and Warranties – is added as follows: “the sale of electric energy or capacity by either party to the other pursuant to this Agreement is not otherwise subject to a particular rate schedule or Tariff unless specifically stated herein.”

10.5 Assignment – Section 10.5 is deleted and replaced with the following provision:

“10.5 Assignment.

- (a) The provisions of this Section 10.5(a) shall apply at all times during which the Energy Access Agreement is in force and effect, as follows:
 - (i) Party A shall not be entitled to assign all or any portion of its interest in this Master Agreement, any claim or any other agreement relating to any of the foregoing (collectively, the “Party A Rights”), without the prior written consent of Party B, which consent may be arbitrarily withheld, except that, at any time and from time to time, Party A, without such consent, shall be entitled to assign all or any portion of its interest in the Party A Rights to an Affiliate or Affiliates of Party A, provided that Party A enters into an agreement with Party B in respect of such assignment that is substantially in the form attached to the EAA as Schedule 6.
 - (ii) No assignment may be made of all or any portion of the Party A Rights by Party A unless Party A obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Party A Rights.
 - (iii) A change in the direct or indirect shareholders of or shareholdings in an assignee that has received assignment this Master Agreement pursuant to Section 10.5(a)(i) that would result in such assignee no longer being an Affiliate of Party A shall be deemed to be an assignment of Party A Rights requiring the prior written consent of Party B pursuant to Section 10.5(a)(i), which consent may be arbitrarily withheld.
 - (iv) Party B shall not be entitled to assign all or any portion of its interest in this Master Agreement, any claim or any other agreement relating to any of the foregoing without the prior written consent of Party A, which consent may be arbitrarily withheld.
 - (v) A Party may only assign this Master Agreement in connection with a contemporaneous assignment of the Energy Access Agreement to an assignee receiving the Party’s entire interest in the EAA.
 - (vi) Any assignment in contravention of this Section 10.5(a) shall be null and void.

- (b) The provisions of this Section 10.5(b) shall apply following any termination or expiry of the Energy Access Agreement, as follows:
 - (i) Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request."

10.6 Governing Law – Section 10.6 is amended by changing the words “State of New York” to “Province of Ontario” on the fourth line.

10.7 Notices – Section 10.7 is amended by deleting the references to “United States” in the third and seventh lines and replacing them with “Canadian”.

10.10 Eligible Financial Contract – Section 10.10 is deleted and replaced with the following:

“This Agreement, including all Transactions under this Agreement and any Performance Assurance or other designated collateral, credit support or margin agreement or similar arrangement and any guarantee thereof, as applicable, each and together constitute an “eligible financial contract” under and in all proceedings related to the *Bankruptcy Insolvency Act* (Canada), the *Companies’ Creditors Arrangement Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) (in any case, as amended, restated, replaced or re-enacted from time to time) and will be treated similarly under and in all proceedings related to any bankruptcy, insolvency or similar law (regardless of the jurisdiction of application or competence of such law) or any ruling, order, directive or pronouncement made pursuant thereto.

The Parties further acknowledge and agree that each of them is a “forward contract merchant” for purposes of the Bankruptcy Code with respect to all Transactions, and that all provisions of the Bankruptcy Code pertaining to “forward contract merchants”, including without limitation, Sections 362(b)(6), 546(e) and 556, shall be applicable to the Parties. The Parties further acknowledge and agree that: (i) all payments made or to be made by one Party to the other Party under or pursuant to this Agreement constitute “settlement payments” within the meaning of the Bankruptcy Code; (ii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute “margin payments” within the meaning of the Bankruptcy Code; and (iii) without limitation, each Party’s rights under Sections 5.2 and 5.3 of this

Agreement constitute a "contractual right to liquidate" the Transactions within the meaning of the Bankruptcy Code."

10.11 Confidentiality – Section 10.11 is deleted and replaced with the following:

"If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the Party's or the Party's Affiliates' employees, lenders, counsel, accountants or advisors who have a need to know such information and who the party is satisfied will keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory or request by a regulatory authority proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Provided however, it shall not be deemed a breach hereunder if a Party discloses the terms and conditions of a Transaction, including the name of and any other identifying information relating to the other Party, to an entity that aggregates and reports such data to the public in the form of an index."

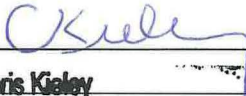
10.13 Notice Period – The following provision is added as a new Section 10.13:

"10.13 Where this Agreement refers to a number of days between events, this is intended to be clear days such that the length of time between them shall exclude the day on which notice is given."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

NALCOR ENERGY

NOVA SCOTIA POWER INCORPORATED

By: 

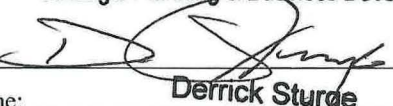
By: _____

Name: Chris Kieley

Name: Wayne O'Connor

Title: Vice President
Strategic Planning & Business Development

Title: Executive Vice President, Operations

By: 

By: _____

Name: Derrick Sturge

Name: Mark Sidebottom

Title: VP, Finance & CFO

Title: Vice President, Power Generation and Delivery

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

Agreement constitute a "contractual right to liquidate" the Transactions within the meaning of the Bankruptcy Code."

10.11 Confidentiality – Section 10.11 is deleted and replaced with the following:

"If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the Party's or the Party's Affiliates' employees, lenders, counsel, accountants or advisors who have a need to know such information and who the party is satisfied will keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory or request by a regulatory authority proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Provided however, it shall not be deemed a breach hereunder if a Party discloses the terms and conditions of a Transaction, including the name of and any other identifying information relating to the other Party, to an entity that aggregates and reports such data to the public in the form of an index."

10.13 Notice Period – The following provision is added as a new Section 10.13:

"10.13 Where this Agreement refers to a number of days between events, this is intended to be clear days such that the length of time between them shall exclude the day on which notice is given."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

NALCOR ENERGY

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

NOVA SCOTIA POWER INCORPORATED

By:  _____

Name: Wayne O'Connor

Title: Executive Vice President, Operations

By:  _____

Name: Mark Sidebottom

Title: Vice President, Power Generation and Delivery

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Affiliate” means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 “Agreement” has the meaning set forth in the Cover Sheet.

1.3 “Bankrupt” means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 “Buyer” means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 “Call Option” means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 “Claiming Party” has the meaning set forth in Section 3.3.

1.8 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 “Confirmation” has the meaning set forth in Section 2.3.

1.10 “Contract Price” means the price in \$U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 “Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 “Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody’s or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 “Cross Default Amount” means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 “Defaulting Party” has the meaning set forth in Section 5.1.

1.15 “Delivery Period” means the period of delivery for a Transaction, as specified in the Transaction.

1.16 “Delivery Point” means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 “Downgrade Event” has the meaning set forth on the Cover Sheet.

1.18 “Early Termination Date” has the meaning set forth in Section 5.2.

1.19 “Effective Date” has the meaning set forth on the Cover Sheet.

1.20 “Equitable Defenses” means any bankruptcy, insolvency, reorganization and other laws affecting creditors’ rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 “Event of Default” has the meaning set forth in Section 5.1.

1.22 “FERC” means the Federal Energy Regulatory Commission or any successor government agency.

1.23 “Force Majeure” means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer’s markets; (ii) Buyer’s inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 “Non-Defaulting Party” has the meaning set forth in Section 5.2.

1.33 “Offsetting Transactions” mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 “Option” means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 “Option Buyer” means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 “Option Seller” means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 “Party A Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 “Party B Collateral Threshold” means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 “Party A Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 “Party B Independent Amount” means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 “Party A Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 “Party B Rounding Amount” means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 “Party A Tariff” means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 “Party B Tariff” means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 “Performance Assurance” means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 “Potential Event of Default” means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 “Product” means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 “Put Option” means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 “Quantity” means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 “Recording” has the meaning set forth in Section 2.4.

1.51 “Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer’s option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 “S&P” means the Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 “Sales Price” means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller’s option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 “Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 “Seller” means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 “Settlement Amount” means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 “Strike Price” means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 “Terminated Transaction” has the meaning set forth in Section 5.2.

1.59 “Termination Payment” has the meaning set forth in Section 5.3.

1.60 “Transaction” means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 “Transmission Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation (“Confirmation”) substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer’s receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller’s receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the “Claiming Party”) gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer’s failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller’s failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if “Accelerated Payment of Damages” is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

- (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
- (c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;
- (d) such Party becomes Bankrupt;
- (e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;
- (f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);
- (h) with respect to such Party's Guarantor, if any:
 - (i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;
 - (ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

- (iii) a Guarantor becomes Bankrupt;
- (iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or
- (v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if “Accelerated Payment of Damages” is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

- (a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and
- (b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) (“Party A Performance Assurance”), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A’s Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a “Pledgor”) hereby grants to the other Party (the “Secured Party”) a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party’s first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

- (i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

- (ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;
- (iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.
- (v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;
- (vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);
- (ix) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

- (x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;
- (xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and
- (xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as “Regulatory Event”) will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute “forward contracts” within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party’s employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

“Act” means _____.¹

“Governmental Entity or Public Power System” means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

“Special Fund” means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System’s obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System’s obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of “Force Majeure” in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System’s ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

¹ Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE
APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS
OF THE STATE OF _____² SHALL APPLY.

² Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

“Ancillary Services” means any of the services identified by a Transmission Provider in its transmission tariff as “ancillary services” including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

“Capacity” has the meaning specified in the Transaction.

“Energy” means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

“Firm (LD)” means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

“Firm Transmission Contingent - Contract Path” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary.

“Firm Transmission Contingent - Delivery Point” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to “force majeure” or “uncontrollable force” or a similar term as defined under the applicable transmission provider’s tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of “Force Majeure” in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

“Firm (No Force Majeure)” means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

“Into _____ (the “Receiving Transmission Provider”), Seller’s Daily Choice” means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface (“Interface”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An “Into” Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer (“Seller’s Notification”) of Seller’s immediate upstream counterparty and the Interface (the “Designated Interface”) where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer’s immediate downstream counterparty.

2. Availability of “Firm Transmission” to Buyer at Designated Interface; “Timely Request for Transmission,” “ADI” and “Available Transmission.” In determining availability to Buyer of next-day firm transmission (“Firm Transmission”) from the Designated Interface, a “Timely Request for Transmission” shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller’s Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller’s Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an “ADI”) either (a) on the Receiving Transmission Provider’s transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as “Available Transmission”) within the Receiving Transmission Provider’s transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this “Into Product” (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

“Native Load” means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

“Non-Firm” means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

“System Firm” means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the “System”) with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller’s failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer’s failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system’s, or the control area’s, or reliability council’s reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller’s performance. Buyer’s failure to receive shall be excused (i) by Force Majeure; (ii) by Seller’s failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer’s performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

“Transmission Contingent” means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller’s proposed generating source to the Buyer’s proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of “Force Majeure” in Article 1.23 to the contrary.

“Unit Firm” means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller’s failure to deliver under a “Unit Firm” Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer’s failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A**MASTER POWER PURCHASE AND SALE AGREEMENT
CONFIRMATION LETTER**

This confirmation letter shall confirm the Transaction agreed to on _____, _____ between _____ (“Party A”) and _____ (“Party B”) regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

☐ Into _____, Seller’s Daily Choice

☐ Firm (LD)

☐ Firm (No Force Majeure)

☐ System Firm

(Specify System: _____)

☐ Unit Firm

(Specify Unit(s): _____)

☐ Other _____

☐ Transmission Contingency (If not marked, no transmission contingency)

☐ FT-Contract Path Contingency ☐ Seller ☐ Buyer

☐ FT-Delivery Point Contingency ☐ Seller ☐ Buyer

☐ Transmission Contingent ☐ Seller ☐ Buyer

☐ Other transmission contingency

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price: _____

Energy Price: _____

Other Charges: _____

Confirmation Letter
Page 2

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]

[Party B]

Name: _____

Name: _____

Title: _____

Title: _____

Phone No: _____

Phone No: _____

Fax: _____

Fax: _____

ENERGY ACCESS AGREEMENT

SCHEDULE 3

NALCOR MASTER AGREEMENT MODIFICATIONS

NALCOR MASTER AGREEMENT MODIFICATIONS

The following amendments shall be deemed to have been made to the Nalcor Master Agreement (as modified in accordance with its Cover Sheet) for the purposes of all Transactions entered into between Nalcor and NSPI pursuant to this Agreement in respect of Nalcor Supplied Energy.

ARTICLE ONE: GENERAL DEFINITIONS

The definition of “Force Majeure” set forth at Section 1.23 is replaced as follows:

“Force Majeure” - has the meaning given to such term in the Energy Access Agreement.

The definition of “Product” set forth at Section 1.47 is replaced as follows:

“Product” means electrical energy measured and expressed in megawatt hours, excluding all rights and value associated with such Energy in respect of associated Capacity and environmental attributes unless otherwise specified by the Parties in the Transaction, it being acknowledged by the Parties that the obligation of the Seller to deliver such electrical energy is subject to Section 3.4 (“Forgivable Events”) of this Master Agreement;

The definition of “Replacement Price” set forth at Section 1.51 is replaced as follows:

“Replacement Price” means the price, calculated using the Incremental Cost Rate, at which NSPI is deemed to have purchased or generated, acting in a commercially reasonable manner, a replacement for any Product specified in a Transaction but not delivered by Nalcor; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall NSPI be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Nalcor’s liability.

The definition of “Sales Price” set forth at Section 1.53 is replaced as follows:

“Sales Price” means the price at which Nalcor, acting in a commercially reasonable manner, resells any Product not received by NSPI, deducting from such proceeds any (i) costs reasonably incurred by Nalcor in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Nalcor in delivering such Product to the third party purchasers, provided, however, if Nalcor is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by NSPI, the Sales Price with respect to such unsold Product shall be deemed to be zero (0); provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Nalcor be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize NSPI’s liability.

The following definition is added as a new Section 1.67:

“Confidential Information” - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.68:

“Forced Outage” - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.69:

“Forgivable Event” - means any of the following, as applicable:

- (i) Force Majeure;
- (ii) a Safety Event;
- (iii) a Forced Outage; or
- (iv) an action required to be taken by a Party to comply with Good Utility Practice.

The following definition is added as a new Section 1.70:

“Good Utility Practice” - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.71:

“Incremental Cost Rate” - means the rate in dollars per MWh that is equal to, as applicable, NSPI's incremental incurred cost associated with generating or purchasing the MWh of Product not delivered by Nalcor, as calculated by NSPI in accordance with a methodology that is accepted at such time by the Nova Scotia Utility and Review Board as an appropriate methodology for determining NSPI's hourly incremental cost per MWh to generate or purchase Energy, taking into account, to the extent applicable in the given circumstances and without duplication, items such as transmission tariff charges and other fees incurred, fuel costs, variable capital costs, environmental compliance costs, line losses, and other variable operating costs; provided, however, that if at any time no such methodology is in use, a substitute methodology shall be agreed to by Nalcor and NSPI, or failing such agreement, the substitute methodology shall be resolved by means of a Specified Dispute pursuant to the Dispute Resolution Procedure of the Energy Access Agreement. Section 1.2(m) of the Energy Access Agreement applies to the foregoing provision.

The following definition is added as a new Section 1.72:

“NL Taxes” - means Taxes imposed by a governmental authority under the applicable law of the Province of Newfoundland and Labrador, except income Taxes and, for greater certainty, does not include GST and all other federal or international Taxes.

The following definition is added as a new Section 1.73:

“NS Taxes” - means Taxes imposed by a governmental authority under the applicable law of the Province of Nova Scotia, except income Taxes and, for greater certainty, does not include GST and all other federal or international Taxes.

The following definition is added as a new Section 1.74:

“Safety Event” - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.75:

“Tax” or “Taxes” - means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than transmission tariffs) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

Section 2.2 (“Governing Terms”) is amended by: (1) inserting the following as a new third sentence: “All references herein to the “Master Agreement” or to “this Agreement” shall be deemed to refer to the Master Agreement as amended by Schedule 3 of the EAA”, and (2) replacing the fourth sentence with the following sentence: “Any inconsistency or conflict between the terms governing a Transaction shall be resolved first in favour of the terms of the Transaction, next in favour of the terms of this Master Agreement, then in favour of any applicable terms of the EAA.”

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

The following provision is added as a new Section 3.4:

“3.4 Forgivable Events. To the extent that a Party (in this Section referred to as the “First Party”) is prevented by a Forgivable Event from delivering or receiving, as

applicable, all or part of the Product pursuant to a Transaction and it gives notice and details of the Forgivable Event to the other Party as soon as practicable, then, the First Party shall be excused from the performance of its obligation to deliver or receive with respect to such Transaction. The other Party shall not be required to perform or resume performance of its obligations to the First Party corresponding to the obligations of the First Party that have been excused by the Forgivable Event.”

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Section 4.1 (“Seller Failure”) is amended by inserting the words “, by Section 3.4,” immediately prior to the words “or by Buyer’s failure to perform” in the third line.

Section 4.2 (“Buyer Failure”) is amended by inserting the words “, by Section 3.4,” immediately prior to the words “or by Seller’s failure to perform” in the third line.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

Section 5.4 (“Notice of Payment of Acceleration Payment”) is amended by deleting the words “or its Affiliate” from the last sentence and, also in the last sentence, deleting the words “any other agreement” and replacing them with the words “the Energy Access Agreement”.

Section 5.8 (“Additional Rights on Default”) is amended by deleting the words “any other agreements, instruments or undertakings between the Non Defaulting Party and the Defaulting Party” in subsection (v) and replacing them with the words “the Energy and Capacity Agreement”.

ARTICLE SIX: PAYMENT AND NETTING

Section 6.2 (“Timeliness of Payment”) is amended by deleting the words “later of the twentieth (20th) day of each month, or tenth (10th)” and inserting in their place the words “twentieth (20th)”.

ARTICLE NINE: GOVERNMENTAL CHARGES

The following provision is added as a new Section 9.4:

“9.4 Provincial Taxes. Notwithstanding Section 9.2 and the definition of “Governmental Charges”:

- (a) NSPI shall pay all NS Taxes on or with respect to the Product purchased and received pursuant to this Agreement; and
- (b) Nalcor shall pay all NL Taxes on or with respect to the Product sold and delivered pursuant to this Agreement.”

The following provision is added as a new Section 9.5:

“9.5 Tax Gross-up. If subsection 182(1) of the *Excise Tax Act* (Canada) applies to any amount payable by one Party to the other Party, such amount shall first be

increased by the percentage determined for “B” in the formula in paragraph 182(1)(a) of the *Excise Tax Act*, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the *Excise Tax Act*.”

The following provision is added as a new Section 9.6:

“9.6 HST Registration Status and Residency.

- (a) Nalcor represents and warrants that it is registered for purposes of the GST and that its registration number is 837364611, and undertakes to advise NSPI of any change in its GST registration status or number.
- (b) NSPI represents and warrants that it is registered for purposes of the GST and that its registration number is 11931 4938, and undertakes to advise Nalcor of any change in its GST registration status or number.
- (c) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada), and undertakes to advise NSPI of any change in its residency status.
- (d) NSPI represents and warrants that it is not a non-resident of Canada for the purposes of the *Income Tax Act*, and undertakes to advise Nalcor of any change in its residency status.”

The following provision is added as a new Section 9.7:

“9.7 Additional Tax Disclosure. Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:

- (a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
- (b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the *Income Tax Act*, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the *Income Tax Act*; and
- (c) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

In addition to the notification required under this Section, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in paragraphs (a) through (c).”

The following provision is added as a new Section 9.8:

“9.8 Tax Indemnity. Each Party (in this Section referred to as the “First Party”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any taxes for which the First Party is responsible under Article Nine hereof or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the *Income Tax Act*. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay GST pursuant to Article Nine, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

- (a) any and all Taxes imposed by any government authority on the other Party with respect to this Agreement, and any and all claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing, if and to the extent such Taxes or claims result from the failure by the First Party to pay any and all Taxes imposed as stated herein; and
- (b) any and all Taxes imposed by any government authority with respect to the supplies contemplated by this Agreement, and any and all claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing, if and to the extent such Taxes or claims result from the failure by the First Party to pay any and all Taxes imposed as stated herein.”

The following provision is added as a new Section 9.9:

“9.9 Additional Tax Indemnity. If one Party (in this Section referred to as the “First Party”) is, at any time, a non-resident of Canada for the purposes of the *Income Tax Act* or the applicable law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this Section referred to as the “Foreign Jurisdiction”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:

- (a) any such amount payable by the First Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
- (b) for greater certainty, this Section shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.”

ARTICLE TEN: MISCELLANEOUS

Section 10.6 ("Governing Law") is amended by: (1) deleting the words "State of New York" on the third and fourth lines and replacing them with the words "Province of Newfoundland and Labrador", and (2) adding the following as a new third sentence: "The Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada."

Section 10.8 ("General") is amended by inserting the following immediately prior to the words "the Party A Tariff" in the second line: "the Energy Access Agreement,".

Section 10.11 ("Confidentiality") is replaced as follows:

"10.11 Confidentiality. - The Parties agree that Article 14 of the EAA is incorporated in this Master Agreement by reference and applies to all Confidential Information disclosed by one Party to the other under or in connection with this Master Agreement and any Transaction hereunder, the Party disclosing Confidential Information being a Disclosing Party as defined in the EAA, and the Party receiving Confidential Information being a Receiving Party as defined in the EAA."

ENERGY ACCESS AGREEMENT

SCHEDULE 4

DESCRIPTION OF NALCOR PROGRESS REPORT

DESCRIPTION OF THE NALCOR PROGRESS REPORT

Each Progress Report will contain the following elements:

- 1.0 A summary of the actual quantities of Energy made available to NSPI in each of the prior Contract Years, with detail that is consistent with the components identified in Section 4.2 of the Agreement;
- 2.0 A forecast identifying the total quantity of Energy predicted to be made available to NSPI in each of: (a) the then-current Contract Year, and (b) the subsequent Contract Year;
- 3.0 For each of the Contract Years following those identified in Section 2.0, above, remaining in the Term, Nalcor will provide a forecast of the amount of Energy that is predicted to be made available to NSPI. This forecast will be based upon an assessment of the following data, which will also be included in the Progress Report:
 - NL Native Load forecast that will be primarily based on the most current planning load forecast used by NLH before its regulator;
 - A summary description of the NL generating facilities that are available to contribute to the production of Nalcor Generated Energy. Such description will identify facility name, installed capacity, firm annual Energy capability, average annual Energy capability, and the planned retirement date of each applicable facility;
 - A summary description of the NL generating facilities that are included in the generation expansion plans for NL. Such description will identify the intended in-service date, installed plant capacity, firm annual Energy capability and average annual Energy capability of each applicable facility; and
 - A description of any changes to the generation planning criteria for Newfoundland and Labrador from that which was in effect as of the Effective Date of this Agreement.
- 4.0 A summary of the quantities of Energy that either have been made available, or are forecasted to be made available to NSPI in each Contract Year of the Term, as the case may be; and
- 5.0 An overall assessment comparing the sum total of these Contract Year Energy availability quantities to the Commitment, and the calculation of any actual or predicted Variance, if applicable.

ENERGY ACCESS AGREEMENT

SCHEDULE 5

FORM OF BALANCING SERVICE AGREEMENT

NALCOR ENERGY

and

[EMERA INC. / NOVA SCOTIA POWER INC.]

BALANCING SERVICE AGREEMENT

[Notes to draft that are in italics and square brackets are intended to provide direction to the future drafters who will finalize the execution version of this agreement.]

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION.....	1
1.1 Definitions	1
1.2 Construction of Agreement.....	12
1.3 Conflicts between Parts of Agreement or the IOA.....	14
1.4 Applicable Law and Submission to Jurisdiction.....	14
1.5 Schedules.....	15
ARTICLE 2 BALANCING SERVICES	15
2.1 Provision of Balancing Services	15
2.2 Nomination of Energy Flow Rate.....	15
2.3 Delivery and Redelivery of Balancing Energy	16
2.4 Balancing Period.....	18
2.5 Energy Imbalances.....	18
2.6 Forgivable Events – Redelivery of Balancing Energy	18
2.7 Good Utility Practice.....	20
ARTICLE 3 PERMITS, LICENCES AND APPLICABLE LAW	20
3.1 Licences and Compliance with Law	20
ARTICLE 4 INVOICING AND PAYMENT.....	20
4.1 Invoices.....	20
4.2 Disputed Amounts.....	20
4.3 Time and Method of Payment	20
4.4 Effect of Payment	21
4.5 Resolution of Objections	21
4.6 Overpayments	21
4.7 Interest on Overdue Amounts.....	21
4.8 Waiver of Unbilled Charges.....	21
4.9 Records and Audits.....	22
ARTICLE 5 TAXES.....	22
5.1 Supplies and Payments Exclusive of Taxes.....	22
5.2 Determination of Value for Tax Compliance Purposes	23
5.3 Invoicing	24
5.4 Payment and Offset.....	24
5.5 HST Registration Status and Residency	24
5.6 Cooperation to Minimize Taxes	25
5.7 Additional Tax Disclosure	25
5.8 Prohibited Tax Disclosure.....	25
5.9 Withholding Tax	26
5.10 Tax Indemnity.....	26
5.11 Additional Tax Indemnity	26
5.12 Assignment – Tax Requirements.....	27

ARTICLE 6 TERM AND TERMINATION.....	27
6.1 Term	27
6.2 Termination of Agreement.....	27
6.3 Effect of Termination.....	28
ARTICLE 7 DEFAULT AND REMEDIES	28
7.1 Emera Events of Default.....	28
7.2 Nalcor Remedies upon Emera Event of Default.....	29
7.3 Nalcor Events of Default.....	30
7.4 Emera Remedies upon Nalcor Event of Default.....	30
7.5 No Cross Default.....	31
ARTICLE 8 FORCE MAJEURE	31
8.1 Force Majeure	31
8.2 Force Majeure of less than 24 Hours Duration	31
ARTICLE 9 LIABILITY AND INDEMNITY.....	32
9.1 Nalcor Indemnity	32
9.2 Emera Indemnity	32
9.3 Indemnification Procedure.....	32
9.4 Insurer Approval.....	34
ARTICLE 10 LIMITATION OF DAMAGES	35
10.1 Limitations and Indemnities Effective Regardless of Cause of Damages.....	35
10.2 No Consequential Loss	35
10.3 Liquidated Damages	35
10.4 Insurance Proceeds	35
ARTICLE 11 CONFIDENTIALITY	36
11.1 Confidentiality and Restricted Use	36
11.2 Acknowledgments	38
11.3 Disclosures Required by Law	38
11.4 Disclosure of Agreement	40
ARTICLE 12 ASSIGNMENT AND CHANGE OF CONTROL	40
12.1 Nalcor Assignment Rights.....	40
12.2 Emera Assignment Rights.....	40
ARTICLE 13 DISPUTE RESOLUTION	41
13.1 General	41
13.2 Procedure for Inter-Party Claims.....	41
ARTICLE 14 REPRESENTATIONS, WARRANTIES AND COVENANTS	42
14.1 Nalcor Representations and Warranties.....	42

14.2	Emera Representations and Warranties	43

ARTICLE 15 MISCELLANEOUS PROVISIONS.....44

15.1	Notices.....	44
15.2	Prior Agreements	45
15.3	Counterparts	45
15.4	Expenses of Parties.....	45
15.5	Announcements	45
15.6	Relationship of the Parties	46
15.7	Further Assurances.....	46
15.8	Severability	46
15.9	Time of the Essence.....	46
15.10	Amendments	46
15.11	No Waiver.....	46
15.12	No Third Party Beneficiaries	47
15.13	Survival	47
15.14	Waiver of Sovereign Immunity.....	47
15.15	Successors and Assigns.....	47
15.16	Capacity of Nalcor	47

Schedules:

- Schedule 1 - Form of Assignment Agreement
- Schedule 2 - Dispute Resolution Procedure

BALANCING SERVICE AGREEMENT

THIS BALANCING SERVICE AGREEMENT is made effective the • day of •, 20• (the “**Effective Date**”)

BETWEEN:

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act*, being Chapter E-11.01 of the Statutes of Newfoundland and Labrador, 2007, solely in its own right and not as agent of the NL Crown (“**Nalcor**”)

- and -

[EMERA / NSPI, as Emera and/or NSPI may elect in accordance with Section 5.7 of the Energy Access Agreement. The party or parties so elected is referred to for convenience in this Agreement form as “Emera” (to be revised to “NSPI” if applicable).]

WHEREAS:

- A. Nalcor, Emera and NSPI entered into an Energy Access Agreement on April 13, 2015 providing NSPI with access to market-priced Energy when needed to economically serve NSPI and its ratepayers;
- B. This Balancing Service Agreement is entered into in accordance with Section 5.8(a) of the Energy Access Agreement;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 **Definitions**

In this Agreement, including the recitals and, subject to **Section 1.2(h)**, in the Schedules:

“**ATIPPA**” has the meaning set forth in **Section 11.3(a)**;

“**Affiliate**” means, with respect to any Person, any other Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such Person; provided however that the NL Crown shall be deemed not to be an Affiliate of Nalcor;

“Agreement” means this agreement, including all Schedules, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“Alternative Generation Facilities” means the wind, solar, tidal, or other intermittent generation facilities located in NS or adjacent waters which from time to time are constructed or contracted for by Emera for the purpose contemplated by Section 5.7 of the Energy Access Agreement and in respect of which the balancing service is provided pursuant to this Agreement;

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of, and the terms of all judgments, orders and decrees issued by, any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Authorized Purpose” has the meaning set forth in **Section 11.1(a)**;

“Balancing Energy” means Energy generated by the Alternative Generation Facilities and delivered by Emera to Nalcor, or Energy redelivered by Nalcor to Emera, as applicable, in each case in accordance with **Article 2**;

“Balancing Fee” has the meaning set forth in **Section 2.2(d)**;

“Balancing Period” has the meaning set forth in **Section 2.4**;

“Balancing Year” means each calendar year during the Term following the In-Service Date, commencing on January 1 and concluding on December 31, provided that:

- (a) if the In-Service Date is not January 1 of the applicable year, the first Balancing Year of the Term will be the partial calendar year starting on the In-Service Date and ending on December 31 of such year; and
- (b) if paragraph (a) applies, the last Balancing Year of the Term will be the partial calendar year starting on the 25th anniversary of the January 1 commencement of

the second Balancing Year and ending on the date immediately preceding the 26th anniversary of the In-Service Date.

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL, or in Halifax Regional Municipality, NS;

“CPI” means the consumer price index for “All Items” published or established by Statistics Canada (or its successor) for any relevant calendar year in relation to NL;

“Canadian GAAP” means generally accepted accounting principles as defined by the Canadian Institute of Chartered Accountants or its successors, as amended or replaced by international financial reporting standards or as otherwise amended from time to time;

“Claiming Party” has the meaning set forth in **Section 13.2(a)**;

“Claims” means any and all Losses, claims, actions, causes of action, demands, fees (including all legal and other professional fees and disbursements, court costs and experts’ fees), levies, Taxes, judgments, fines, charges, deficiencies, interest, penalties and amounts paid in settlement, whether arising in equity, at common law, by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind or character;

“Confidential Information” means:

- (a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of the Disclosing Party, directly or indirectly, to the Receiving Party, including all data, documents, reports, analyses, tests, specifications, charts, plans, drawings, ideas, schemes, correspondence, communications, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operations, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party, its Affiliates, this Agreement or the transactions contemplated hereunder; and
- (b) all summaries, notes, analyses, compilations, studies and other records prepared by the Receiving Party that contain or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in the foregoing paragraph (a);

“Contract Year” has the meaning set forth in the Energy Access Agreement;

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to “Control” any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms “Controlled by” and “under common Control with” have correlative meanings);

“Delivery Point” means the point of interconnection of the Maritime Link and the Nova Scotia Transmission System at the 345 kV side of the HVdc converter transformers at Woodbine, NS;

“Disclosing Party” means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of another Party;

“Dispute” means any dispute, controversy or claim of any kind whatsoever arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Applicable Law that affects this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof;

“Dispute Resolution Procedure” has the meaning set forth in **Section 13.1(a)**;

“Effective Date” has the meaning set forth in the commencement of this Agreement [*This assumes that the Agreement will be entered into in the year preceding the In-Service Date of the Alternative Generation Facilities.*];

“Emera” has the meaning set forth in the preamble to this Agreement and includes Emera’s successors and permitted assigns;

“Emera Affiliate Assignee” means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 12.2(a)**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

“Emera Default” has the meaning set forth in **Section 7.1**;

“Emera Group” has the meaning set forth in **Section 9.1**;

“Energy” means electrical energy measured and expressed in MWh or GWh;

“Energy Access Agreement” means the agreement dated April 13, 2015 between Nalcor, Emera and NSPI providing NSPI with access to market-priced Energy when needed to economically serve NSPI and its ratepayers;

“Energy and Capacity Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block;

“Escalation Factor” means the multiplier that is equal to the escalation rate resulting from the cumulative effect of the annual CPI percentage change applicable to each whole or partial year during the period starting on October 20, 2013 and ending on the first day of the Balancing Year in respect of which the applicable Balancing Fee payment is made;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“First Two Balancing Periods” has the meaning set forth in **Section 2.6(b)**;

“Forced Outage” means the removal from service availability of a generating unit, transmission line or other facility due to emergency reasons or due to the unanticipated failure of such equipment, other than by reason of the failure by the Party claiming the Forced Outage, or an Affiliate of that Party, to comply with Good Utility Practice in operating the applicable facility or facilities;

“Force Majeure” means an event, condition or circumstance (each, an **“event”**) beyond the reasonable control of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, an epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or other inadvertent action or inability to act causing material physical damage to, or materially impairing the operation of, or access to, any of the Nova Scotia Transmission System, the NL Transmission System, or the Maritime Link or any machinery or equipment comprising part of or used in connection with any of such facilities;
- (e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force, or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the delivery or redelivery of Balancing Energy, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization; and

- (f) where claimed by Nalcor, the inability of the Maritime Link to receive, transmit or deliver Energy under the terms of the Maritime Link Transmission Service Agreements; and
- (g) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery or redelivery of Balancing Energy that is required by the applicable System Operator for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices;

but the following shall not be considered a Force Majeure event:

- (i) lack of finances or changes in economic circumstances of a Party;
- (ii) if the event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure; or
- (iii) any delay in the settlement of any Dispute;

“Forgivable Event” means any of the following, as applicable:

- (a) prior the scheduling of delivery of Balancing Energy pursuant to **Section 2.3(c)(i)**, a requirement by Nalcor to utilize such Energy in order to satisfy NL Native Load;
- (b) Force Majeure;
- (c) a Safety Event;
- (d) a Forced Outage; or
- (e) an action required to be taken by a Party to comply with Good Utility Practice;

“Formal Agreements” means the following agreements dated July 31, 2012 between Nalcor and Emera:

- (a) Maritime Link - Joint Development Agreement;
- (b) Energy and Capacity Agreement;
- (c) Maritime Link (Nalcor) Transmission Service Agreement;
- (d) Maritime Link (Emera) Transmission Service Agreement;
- (e) Nova Scotia Transmission Utilization Agreement;
- (f) New Brunswick Transmission Utilization Agreement;
- (g) MEPCO Transmission Rights Agreement;

- (h) Interconnection Operators Agreement;
- (i) Joint Operations Agreement;
- (j) Newfoundland and Labrador Development Agreement;
- (k) Labrador-Island Link Limited Partnership Agreement;
- (l) Inter-Provincial Agreement; and
- (m) Supplemental Agreement;

“GWh” means gigawatt hours;

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Income Tax Act” means the *Income Tax Act* (Canada);

“Indemnified Party” has the meaning set forth in **Section 9.3(a)**;

“Indemnitor” has the meaning set forth in **Section 9.3(a)**;

“In-Service Date” means the initial in-service date of the Alternative Generation Facilities, being the date that such facilities are first capable of and ready to reliably operate and deliver Energy to the NS Transmission System in accordance with their design criteria;

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;
- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside, or (ii) is not dismissed,

discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or

- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Interconnection Operators Agreement” means the agreement dated July 31, 2012, between NLH and Nova Scotia Power Incorporated relating to the interconnected operations of NLH and Nova Scotia Power Incorporated, and includes any operational protocols implemented pursuant to that agreement;

“Knowledge” means in the case of either Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“Lender Recipient” has the meaning set forth in **Section 11.1(c)**;

“Losses” means any and all losses (other than losses of Energy normally incurred in the transmission of Energy), damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

“MW” means megawatt;

“MWh” means MW hours;

“Maritime Link” or **“ML”** means the transmission facilities to be constructed between the Island Interconnected System and the Nova Scotia Transmission System in accordance with the Maritime Link Joint Development Agreement;

“Maritime Link (Emera) Transmission Service Agreement” means the agreement dated July 31, 2012 between Emera and an Affiliate of Emera relating to transmission rights of an Affiliate of Emera on the ML in respect of the Nova Scotia Block;

“Maritime Link (Nalcor) Transmission Service Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera relating to transmission rights of Nalcor on the ML other than in respect of the Nova Scotia Block;

“Maritime Link Transmission Service Agreements” means the Maritime Link (Emera) Transmission Service Agreement and the Maritime Link (Nalcor) Transmission Service Agreement;

“NL” means the Province of Newfoundland and Labrador;

“NL Crown” means Her Majesty the Queen in Right of NL;

“NL Native Load” means the cumulative electricity consumption within NL by customers of NLH, Nalcor and the Affiliates of NLH and Nalcor and their successors and assigns, plus associated Transmission Losses and distribution losses;

“NL Transmission System” means the bulk Energy transmission system in NL;

“NS” means the Province of Nova Scotia;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“Nalcor Affiliate Assignee” means an Affiliate of Nalcor to which all or any portion of the Nalcor Rights have been assigned in accordance with **Section 12.1(a)**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

“Nalcor Default” has the meaning set forth in **Section 7.3**;

“Nalcor Group” has the meaning set forth in **Section 9.2**;

“Native Load Event” has the meaning set forth in **Section 2.6(a)**;

“Net Imbalance” has the meaning set forth in **Section 2.5(b)**;

“Negative Imbalance” means a Net Imbalance resulting from a greater amount of Balancing Energy having been delivered by Nalcor to Emera than has previously been delivered by Emera to Nalcor;

“Nominated Rate” has the meaning set forth in **Section 2.2(a)**;

“Nova Scotia Block” has the meaning set forth in the Energy and Capacity Agreement;

“Nova Scotia Transmission System” means the bulk Energy transmission system in NS;

“NS Transmission Utilization Agreement” means the agreement dated July 31, 2012 between Emera and Nalcor relating to the provision of transmission rights through NS by Emera to Nalcor;

“NSPI” means Nova Scotia Power Incorporated, a company incorporated pursuant to the laws of NS;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 15.1**;

“Parties” means the parties to this Agreement, and **“Party”** means one of them;

“Payee” has the meaning set forth in **Section 4.1**;

“Payor” has the meaning set forth in **Section 4.1**;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Positive Imbalance” means a Net Imbalance resulting from a greater amount of Balancing Energy having been delivered by Emera to Nalcor than has previously been redelivered by Nalcor to Emera;

“Prime Rate” means the variable rate of interest per annum expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by The Bank of Nova Scotia, or any successor thereto, as its reference rate for the determination of interest rates that it will charge on commercial loans in Canadian dollars made in Canada;

“Receiving Party” means a Party or an Affiliate of a Party that receives Confidential Information from another Party or an Affiliate of another Party;

“Recipient Party” has the meaning set forth in **Section 13.2(a)**;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL, when referring to the Regular Business Hours of Nalcor, and 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS, when referring to the Regular Business Hours of Emera;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Repairs” means repairs, changes, renewals, improvements or replacements;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party and Affiliates of a Party;

“Safety Event” means an event which causes a Party to suspend, as applicable, delivery or redelivery of Balancing Energy for the purpose of safeguarding life or property by making Repairs to its facilities in accordance with Good Utility Practice;

“Schedule”, when used as a verb, means to take all acts necessary to schedule, or cause to be scheduled, the delivery of Energy to the Delivery Point in accordance with this Agreement;

“Specified Dispute” has the meaning set forth in the Dispute Resolution Procedure;

“Supporting Material” has the meaning set forth in **Section 4.1**;

“Tax” or “Taxes” means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Term” has the meaning set forth in **Section 6.1**;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

“Third Party Claim” means a Claim referred to in **Section 9.1** or **9.2**;

“US GAAP” means generally accepted accounting principles as defined by the Financial Accounting Standards Board or its successors, as amended from time to time;

“Undelivered Balancing Energy” has the meaning set forth in **Section 2.6**; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.

- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) "Including" - The word "including", when used in this Agreement, means "including without limitation".
- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with US GAAP except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, Emera shall use commercially reasonable efforts to provide Nalcor with all of the information it needs to prepare Nalcor's accounting records in accordance with Canadian GAAP
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced therein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “approved” by a Party, then (i) such approval by a Party must be in writing, and (ii) such Party shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Wherever a provision of this Agreement states that **Section 1.2(m)** applies, in respect of the matters referred to in that provision:
 - (i) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing;
 - (ii) any failure, inability or refusal of either Party or both Parties to reach agreement shall constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure;
 - (iii) such Dispute shall be resolved as a Specified Dispute if so specified in such provision; and
 - (iv) if such Dispute is not a Specified Dispute, the Parties will be deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve the Dispute by arbitration.

1.3 Conflicts between Parts of Agreement

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any document delivered pursuant to this Agreement, the provision of the body of this Agreement shall prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 13**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to

the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

The following are the Schedules attached to and incorporated by reference in this Agreement, which are deemed to be part hereof:

- Schedule 1 - Form of Assignment Agreement
- Schedule 2 - Dispute Resolution Procedure

ARTICLE 2 BALANCING SERVICES

2.1 Provision of Balancing Services

In accordance with this Agreement, Emera shall deliver Balancing Energy to Nalcor and Nalcor shall redeliver Balancing Energy to Emera for the purpose of balancing the intermittent output of the Alternative Generation Facilities.

2.2 Nomination of Energy Flow Rate

- (a) Nomination of Energy Flow Rate - In respect of each Balancing Year other than an initial partial Balancing Year, Emera shall advise Nalcor by Notice, on or before October 31 of the year preceding such Balancing Year, of the maximum energy flow rate in MW elected by Emera (the “**Nominated Rate**”) to be made available by Nalcor during such Balancing Year. In respect of an initial partial Balancing Year, Emera shall advise Nalcor of the Nominated Rate by Notice by no less than 60 days prior to the In-Service Date.
- (b) Maximum Flow Rate - The Nominated Rate will not exceed +/- the MW amount that is the lesser of:
 - (i) the aggregate generation capacity available to Emera in the applicable Balancing Year from the Alternative Generation Facilities then being utilized by Emera, and
 - (ii) **[100 MW],**

[Aggregate maximum of +/- 100 MW to be shared between NSPI and Emera if those parties are both entering into Balancing Service Agreements pursuant to Section 5.8 of the EAA – revise the 100 MW reference accordingly if applicable]

stated in increments of 1 MW, to be available at all times during the applicable Balancing Year. For greater certainty, the nomination of each 1 MW of balancing services will allow for a flow of up to 1 incremental MW to be delivered to or received from Nalcor at the Delivery Point.

- (c) If No Nomination is Made - If Emera does not so advise Nalcor in accordance with **Section 2.2(a)**, Emera will be deemed to have elected a Nominated Rate of zero MW for the applicable Balancing Year and Nalcor will not be obliged to receive or redeliver Balancing Energy during such Balancing Year.

(d) Balancing Fee

- (i) For each Balancing Year in respect of which Emera elects a Nominated Rate greater than zero MW, Emera shall pay to Nalcor a fee in respect of the Nominated Rate (the “**Balancing Fee**”) calculated as follows:

$$\text{Nominated Rate} * X$$

where X equals \$87,600 multiplied by the Escalation Factor.

If the Effective Date of this Agreement is not January 1, resulting in a partial initial and final Balancing Year of the Term, the Balancing Fee shall be pro-rated for such Balancing Years.

- (ii) The Balancing Fee shall be payable in monthly installments calculated by (A) dividing the Balancing Fee by 12, in the case of a Balancing Year that is a full calendar year, or (B) dividing the Balancing Fee by 365 and multiplying the resulting quotient by the number of days in the applicable full or partial month, in the case of a Balancing Year that is a partial calendar year. Such installments shall be payable in arrears on or before the 20th day of the following month.
- (iii) If the CPI for a relevant calendar year has not yet been published at the time that a calculation pursuant to this **Section 2.2(d)** is required to be performed, then the calculation will be performed using the then-most current CPI. Upon the publication of the updated CPI for the relevant time period, the calculation will be re-performed. If the re-performance of the calculation results in an increase or decrease to the applicable Balancing Fee, then subsequent monthly installments will be adjusted accordingly and a credit or charge associated with any required adjustments to previous installment payments in respect of the applicable Balancing Fee will be accounted for on the next following invoice submitted to Emera by Nalcor.

2.3 Delivery and Redelivery of Balancing Energy

- (a) Delivery and Redelivery of Balancing Energy - At an energy flow rate not exceeding the then-applicable Nominated Rate and in accordance with the provisions of this **Article 2**, Emera may, at its option:
- (i) deliver Balancing Energy to Nalcor and Nalcor shall accept delivery of such Energy from Emera, and

- (ii) take redelivery of Balancing Energy from Nalcor and Nalcor shall redeliver such Energy to Emera.

(b) Delivery of Balancing Energy by Emera

- (i) At any time during each Balancing Period and without prior scheduling, but subject to **Section 2.3(b)(ii)**, Emera may deliver Balancing Energy to Nalcor using automatic generation control or a similar control method and at an energy flow rate not exceeding the then-applicable Nominated Rate.
- (ii) Delivery of Balancing Energy to Nalcor may be adjusted by Emera, at its discretion, at a maximum ramp rate of 10 MW/minute. The foregoing maximum ramp rate applies to adjustments made during the course of ongoing deliveries of Balancing Energy by Emera to Nalcor, as well as to the rate at which Emera may ramp its rate of delivery of Balancing Energy when commencing delivery from an initial level of zero MW.
- (iii) Delivery of Balancing Energy shall be conducted in accordance with the Interconnection Operators Agreement, including any protocols with respect to Balancing Energy that may then be incorporated into such agreement.
- (iv) Delivery of Balancing Energy by Emera to Nalcor may occur concurrently with the redelivery of Balancing Energy by Nalcor to Emera.
- (v) Nalcor shall accept Balancing Energy delivered by Emera in accordance with this **Section 2.3(b)**, except to the extent Nalcor is prevented from doing so due to a Forgivable Event.

(c) Delivery of Balancing Energy by Nalcor

- (i) Scheduling of Balancing Energy – Emera shall request and, subject to Forgivable Events, Nalcor shall then Schedule the redelivery of Balancing Energy to Emera in accordance with such request. The redelivery of Balancing Energy by Nalcor shall be Scheduled on a day-ahead basis in accordance with prevailing scheduling protocols and practices governing the transfer of Energy between the NL Transmission System and the Nova Scotia Transmission System.
- (ii) Delivery of Balancing Energy - Once Balancing Energy has been Scheduled in accordance with **Section 2.3(c)(i)**, Nalcor shall be obliged to redeliver and Emera shall be obliged to receive such Balancing Energy, in both cases subject to Forgivable Events.

- (d) Delivery Point - Balancing Energy that is delivered or received by the Parties will be delivered or received at the Delivery Point.

2.4 Balancing Period

- (a) The periods for determining the Parties' balancing obligations under this Agreement will be the calendar months during each Balancing Year, and, if applicable, the initial partial calendar month in the first Balancing Year and the final partial calendar month in the last Balancing Year (each a "**Balancing Period**").
- (b) In each Balancing Period, Emera shall request Nalcor to redeliver an amount of Balancing Energy to Emera pursuant to **Section 2.3(c)(i)** during such Balancing Period that results in any Net Imbalance that exists at the end of such Balancing Period not exceeding two GWh.
- (c) In each Balancing Period, Emera may request Nalcor to deliver Balancing Energy to Emera in an amount in excess of the Balancing Energy previously delivered by Emera to Nalcor in such Balancing Period provided that such request does not result in a Negative Imbalance of greater than two GWh. Nalcor will have no obligation to Schedule and deliver Energy to Emera in any Balancing Period if such delivery would result in a Negative Imbalance of greater than two GWh.

2.5 Energy Imbalances

- (a) Financial Adjustments - Balancing Energy will be provided by the Parties on a MWh-for-MWh basis, with no financial adjustment or other payment to either Party, other than the Balancing Fee.
- (b) Net Imbalances - A net imbalance of Balancing Energy occurs if, at the end of the applicable Balancing Period, the net Balancing Energy amount that has cumulatively been exchanged between the Parties in such Balancing Period and all prior Balancing Periods is not equal to zero (a "**Net Imbalance**"). Net Imbalances will be addressed as follows:
 - (i) Net Imbalances of up to Two GWh in a Balancing Period - To the extent that a Net Imbalance is less than or equal to two GWh, such imbalance will be reconciled through deliveries of additional Balancing Energy by Emera to Nalcor, or by Emera requesting the redelivery of additional Balancing Energy by Nalcor to it, as applicable, in a subsequent Balancing Period.
 - (ii) Net Imbalances greater than Two GWh - Subject to **Section 2.6**, to the extent that a Net Imbalance is greater than two GWh, the Energy amount that is in excess of two GWh may be retained by the recipient Party for its own use or resale and no compensation shall be payable or further adjustment or reconciliation made with respect to such retained Energy.

2.6 Forgivable Events – Redelivery of Balancing Energy

If, due to a Forgivable Event, Nalcor is not able to redeliver Balancing Energy to Emera at the Delivery Point in a quantity up to that of any Positive Imbalance, or Emera is not able

to accept delivery of such quantity of Balancing Energy at the Delivery Point (such Energy quantities being “**Undelivered Balancing Energy**”), then:

- (a) Reduction of Balancing Fee - For each Balancing Period in respect of which (i) Emera has requested that Nalcor redeliver Balancing Energy pursuant to **Section 2.3(c)(i)**, and (ii) some or all of the Balancing Energy so requested by Emera cannot be redelivered by Nalcor within such Balancing Period due to a Forgivable Event described by paragraph (a) of the definition of “Forgivable Event” (a “**Native Load Event**”), the Balancing Fee payable for such Balancing Period will be determined as follows:

Monthly installment of Balancing Fee x ((MWh of Balancing Energy so requested by Emera minus MWh of Undelivered Balancing Energy not redelivered by Nalcor during such Balancing Period by reason of Native Load Event) / MWh of Balancing Energy so requested by Emera).

- (b) Subsequent Delivery of Energy - Subject to **Section 2.6(c)**, following the cessation of the applicable Forgivable Event, Emera and Nalcor shall cooperate in good faith and use commercially reasonable efforts to cause the Undelivered Balancing Energy to be redelivered by Nalcor to Emera in accordance with **Section 2.3** of this Agreement in the Balancing Period in which it was due for redelivery or in the immediately following Balancing Period (the “**First Two Balancing Periods**”).
- (c) Extended Forgivable Events - If, as a result of a Forgivable Event, the Undelivered Balancing Energy cannot be so redelivered within the applicable First Two Balancing Periods, then Emera may, at its option, elect either:
- (i) to take delivery of the Undelivered Balancing Energy in the next-following Balancing Period and, if such Energy cannot be obtained by Nalcor from sources in NL for any reason including by operation of law, Nalcor shall procure such Energy from market purchases or otherwise from a source or sources external to NL, or
 - (ii) to be paid monetary compensation for such Undelivered Balancing Energy, calculated in accordance with inadvertent Energy accounting standards and procedures developed pursuant to Section 4.9 of the Interconnected Operators Agreement, in which case the compensation will be paid as if the Undelivered Balancing Energy was inadvertent Energy; provided, however that if: (A) such standards and procedures do not provide a mechanism to attribute a monetary value to such Energy quantities, or (B) there is a Dispute regarding the application of this **Section 2.6(c)(ii)**, then either Party may refer the matter for resolution as a Specified Dispute pursuant to Section 6 of the Dispute Resolution Procedure.

Such option will be exercised at least five days preceding the start of the next-following Balancing Period, and if a Forgivable Event is ongoing, will be exercised on a monthly basis in accordance with the foregoing.

2.7 Good Utility Practice

The Parties shall perform their respective obligations under this Agreement in accordance with Good Utility Practice.

ARTICLE 3 PERMITS, LICENCES AND APPLICABLE LAW

3.1 Licences and Compliance with Law

- (a) Each Party shall each be responsible for obtaining and maintaining any licences and permits as may be required for its respective performance of this Agreement.
- (b) Each Party shall comply with any Applicable Law of any Authorized Authority with jurisdiction over the subject matter of this Agreement.

ARTICLE 4 INVOICING AND PAYMENT

4.1 Invoices

Unless otherwise provided in this Agreement with respect to specific payments, the calendar month is the standard period for invoicing amounts payable by a Party (the “**Payor**”) to the other Party (the “**Payee**”) hereunder. On or before the 15th day of each calendar month, the Payee shall provide an invoice to the Payor for all amounts in respect of the preceding month chargeable by the Payee to the Payor and, subject to **Section 4.8**, any amounts not previously invoiced to the Payor. The Payee shall provide with the invoice such supporting documents and information as the Payor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced (the “**Supporting Material**”).

4.2 Disputed Amounts

Within 30 days after receipt of an invoice from the Payee, the Payor shall report in writing to the Payee any disputed amounts in the invoice, specifying the reasons therefor.

4.3 Time and Method of Payment

Except with respect to a payment to be made pursuant to **Section 2.2(d)(ii)**, which Emera shall make in accordance with that Section, within 30 days after its receipt of a properly prepared invoice, accompanied by acceptable Supporting Material, the Payor shall pay to the Payee the amount stated on the invoice less any amounts disputed pursuant to **Section 4.2** and any withholding required by Applicable Law. The Payor shall make payment by electronic funds transfer or other mutually agreed method to an account designated by the Payee.

4.4 Effect of Payment

Notwithstanding **Section 4.2**, payment of an invoice will not prejudice the right of the Payor to dispute the correctness of the invoice for a period of up to two years after the end of the calendar year in which the Payor received the invoice. Failure by the Payor to dispute charges will not be deemed to be acceptance of the charges or preclude the Payor from subsequently disputing an amount or conducting an audit of the charges within two years after the end of the calendar year in which the Payor received the invoice. Any charges not disputed in writing by the Payor within two years after the end of the calendar year in which the Payor received the invoice for such charges will conclusively be presumed to be true and correct.

4.5 Resolution of Objections

The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after the Payee's receipt of a notification of disputed amounts pursuant to **Section 4.2**. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, the Payor shall pay any amount determined to be owing to the Payee within five Business Days after the Payor receives an invoice from the Payee for such amount.

4.6 Overpayments

Within 15 Business Days after a Payee's discovery or receipt of written evidence of an overpayment, the Payee shall refund the overpayment to the Payor.

4.7 Interest on Overdue Amounts

Any amount not paid by either Party when due, including any charge disputed by the Payor pursuant to **Section 4.2** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 4.3**, and any refund of an overpayment pursuant to **Section 4.6**, will bear interest at the Prime Rate plus three percent per annum, calculated daily not in advance, from the date upon which the payment became due to and including the date of payment, and interest accrued will be payable on demand.

4.8 Waiver of Unbilled Charges

If a Payee entitled to payment in respect of an amount paid by the Payee to a third party fails to invoice the Payor pursuant to this **Article 4** for such amount within six months after the date the Payee made payment to the third party, the right to such payment by the Payor is waived. Notwithstanding the foregoing, a Party may recover Taxes pursuant to a statutory right to recover such Taxes, including the right to recover HST pursuant to Section 224 of the Excise Tax Act.

4.9 Records and Audits

Each Party shall keep complete and accurate records and all other data required by it for the purpose of proper administration of this Agreement. Records shall be retained for at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Party to comply with its obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for by **Article 11**. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

ARTICLE 5 TAXES

5.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 5.1(c)**:
 - (i) Emera shall pay or cause to be paid all Taxes on or with respect to the Balancing Services provided by Nalcor to Emera hereunder;
 - (ii) if Nalcor is required by Applicable Law to remit or pay Taxes which are Emera's responsibility hereunder, Nalcor shall first offset the amount of Taxes so recoverable from other amounts owing by it to Emera under this Agreement, and Emera shall promptly reimburse Nalcor for such Taxes to the extent not so offset;
 - (iii) if Emera is required by Applicable Law to remit or pay Taxes which are Nalcor's responsibility hereunder, Emera shall first offset the amount of Taxes so recoverable from other amounts owing by it to Nalcor under this Agreement, and Nalcor shall promptly reimburse Emera for such Taxes to the extent not so offset; and
 - (iv) nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.
- (c) HST - Notwithstanding **Sections 5.1(a)** and **5.1(b)**, the Parties acknowledge and agree that:

- (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to the other Party, such amount shall first be increased by the percentage determined for “B” in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
 - (iii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other Party such documentation required pursuant to **Section 5.3**; and
 - (iv) if one Party incurs an expense as agent for the other Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 5.1(b)** and **5.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) Emera and its Affiliates are solely responsible for the payment of income taxes and HST payable by Emera and its Affiliates, as the case may be; and
 - (ii) Nalcor and its Affiliates are solely responsible for the payment of income taxes and HST payable by Nalcor and its Affiliates, as the case may be.

5.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 5.2(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party

shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

5.3 Invoicing

All invoices, as applicable, issued pursuant to **Article 4** shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

5.4 Payment and Offset

- (a) Subject to **Section 5.4(b)**, Taxes collectable by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

5.5 HST Registration Status and Residency

- (a) Nalcor represents and warrants that it is registered for purposes of the HST and that its registration number is 837364611, and undertakes to advise Emera of any change in its HST registration status or number.
- (b) Emera represents and warrants that it is registered for purposes of the HST and that its registration number is *[insert Emera or NSPI HST number, as applicable]*, and undertakes to advise Nalcor of any change in its HST registration status or number.
- (c) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Emera of any change in its residency status.

- (d) Emera represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Nalcor of any change in its residency status.

5.6 Cooperation to Minimize Taxes

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Law, so long as neither Party is materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Law in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).

5.7 Additional Tax Disclosure

Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide to the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:

- (a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
- (b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and
- (c) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

In addition to the notification required under this Section, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in paragraphs (a) through (c).

5.8 Prohibited Tax Disclosure

Except as required by Applicable Law, notwithstanding any other provision of this Agreement, each Party shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of the other Party to an Authorized Authority without the prior written consent of such other Party.

5.9 Withholding Tax

If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Law, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, the Party shall deliver to the other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of the other Party.

5.10 Tax Indemnity

Each Party (in this Section referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 5** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 5.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

- (a) any and all Taxes imposed by any Authorized Authority on the other Party in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein; and
- (b) any and all Taxes imposed by any Authorized Authority in respect of the supplies contemplated by this Agreement, and any and all Claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein.

5.11 Additional Tax Indemnity

If one Party (in this Section referred to as the “**First Party**”) is, at any time, a non-resident of Canada for the purposes of the Income Tax Act or the Applicable Law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this Section referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:

- (a) any such amount payable by the First Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
- (b) for greater certainty, this Section shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

5.12 Assignment – Tax Requirements

Notwithstanding any other provision in this Agreement, except as otherwise agreed to by the Parties in writing, a Party shall not assign any of its interest in this Agreement to another Person unless:

- (a) the Person is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such assignment;
- (b) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Article 5**.

ARTICLE 6 TERM AND TERMINATION

6.1 Term

The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall terminate in accordance with **Section 6.2**.

6.2 Termination of Agreement

This Agreement shall terminate on the earliest to occur of any of the following events:

- (a) the 25th anniversary of the In-Service Date;
- (b) written agreement of the Parties to terminate; and
- (c) upon Nalcor’s election, if the In-Service Date has not occurred by the start of the final Contract Year of the Energy Access Agreement.

6.3 Effect of Termination

- (a) Obligations on Termination - When this Agreement terminates:
- (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Section 11.1**); and
 - (ii) neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 6.3**.
- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
- (i) the final settlement of all accounts between the Parties;
 - (ii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;
 - (iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement; and
 - (iv) any other obligations that survive pursuant to **Section 15.13**.

ARTICLE 7 DEFAULT AND REMEDIES

7.1 Emera Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Emera under this Agreement (an “**Emera Default**”):

- (a) Emera fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Nalcor that such amount is due and owing;
- (b) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 7.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor, unless the cure reasonably requires a longer period

and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor;

- (c) any representation or warranty made by Emera in this Agreement is false or misleading in any material respect;
- (d) Emera ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (e) any Insolvency Event occurs with respect to Emera.

7.2 Nalcor Remedies upon Emera Event of Default

- (a) General - Upon the occurrence of an Emera Default and at any time thereafter, provided Nalcor is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Nalcor shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Nalcor are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to **Article 10**, Nalcor may recover all Losses suffered by Nalcor that are due to an Emera Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Nalcor to recover any amounts owed to Nalcor by Emera under this Agreement.
- (c) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his, her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to future Disputes of a similar nature.
- (d) Equitable Relief - Nothing in this **Article 7** will limit or prevent Nalcor from seeking equitable relief including specific performance, or a declaration to enforce Emera's obligations under this Agreement.

7.3 **Nalcor Events of Default**

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a “**Nalcor Default**”):

- (a) Nalcor fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Emera that such amount is due and owing;
- (b) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 7.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera;
- (c) any representation or warranty made by Nalcor in this Agreement is false or misleading in any material respect;
- (d) Nalcor ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (e) any Insolvency Event occurs with respect to Nalcor.

7.4 **Emera Remedies upon Nalcor Event of Default**

- (a) **General** - Upon the occurrence of a Nalcor Default and at any time thereafter, provided Emera is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Emera shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Emera are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) **Losses** - Subject to **Article 10**, Emera may recover all Losses suffered by Emera that are due to a Nalcor Default, including, for the avoidance of doubt, any costs or

expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Emera to recover any amounts owed to Emera by Nalcor under this Agreement.

7.5 No Cross Default

For greater certainty, this Agreement does not modify any of the obligations of the Parties pursuant to the Formal Agreements and there shall be no cross-defaults between this Agreement and the Formal Agreements.

ARTICLE 8 FORCE MAJEURE

8.1 Force Majeure

If by reason of an event of Force Majeure, a Party is not reasonably able to fulfill an obligation, other than an obligation to pay or spend money, in accordance with the terms of this Agreement, then such Party shall:

- (a) forthwith provide Notice to the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
- (b) subject to **Section 2.6**, be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
- (c) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;
- (d) as soon as reasonably possible after such Force Majeure, fulfill or resume fulfilling its obligations hereunder;
- (e) provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and
- (f) not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.

8.2 Force Majeure of less than 24 Hours Duration

Notwithstanding **Sections 8.1(a)** and **15.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a

duration of less than 24 hours shall be given to an operational representative of the receiving Party. Each Party shall provide by Notice telephone and other electronic contact information to the other for the purposes of this Section prior to the In-Service Date. Either Party may change such contact information from time to time by giving Notice of such change to the other Party in accordance with **Section 15.1**.

ARTICLE 9 LIABILITY AND INDEMNITY

9.1 Nalcor Indemnity

Nalcor shall indemnify, defend, reimburse, release and save harmless Emera and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the “**Emera Group**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Emera Group by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Nalcor Group occurring in connection with, incidental to or resulting from Nalcor’s obligations under this Agreement.

9.2 Emera Indemnity

Emera shall indemnify, defend, reimburse, release and save harmless Nalcor and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the “**Nalcor Group**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Nalcor Group by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Emera Group occurring in connection with, incidental to or resulting from Emera’s obligations under this Agreement.

9.3 Indemnification Procedure

- (a) Generally - Each Party (each, an “**Indemnitor**”) shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 9.1** or **9.2**, as applicable, (individually and collectively, an “**Indemnified Party**”) as provided therein in the manner set forth in this **Section 9.3**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 9.3** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.

- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 9.3(h)**.

- (e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

- (f) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable third party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.
- (g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.
- (h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 9.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

9.4 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured Claim, neither the Indemnified Party nor the Indemnitor, as the case may be, shall negotiate, settle, retain counsel to defend or defend any such Claim, without having first obtained the prior approval of the insurer(s) providing such insurance coverage.

ARTICLE 10

LIMITATION OF DAMAGES

10.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 9** and this **Article 10** shall apply to any and all Claims.

10.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement except that such consequential, incidental, indirect or punitive damages awarded against a member of the Nalcor Group or the Emera Group, as the case may be, with respect to matters relating to this Agreement, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 10.2**. For the purposes of this **Section 10.2**, lost revenues or profits shall not be considered to be consequential, incidental or indirect damages.

10.3 Liquidated Damages

To the extent that any damages required to be paid under **Article 7** of this Agreement are expressly stated to be liquidated damages, the Parties have computed, estimated and agreed upon the amount of such damages as a reasonable forecast of anticipated or actual Losses in view of the difficulty in calculating or determining the consequences of the harm or the amount of the Losses. The Parties agree that such liquidated damages are a genuine pre-estimate of damages, are not a penalty, and are intended to protect both Parties from uncertainties. The obligation of a Party to pay, and the other Party to accept such amount, as applicable, shall be legally enforceable and binding upon the Parties.

10.4 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim for indemnification by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to (i) any insurance proceeds received or entitled to be received in relation to the Claim, and (ii) the value of any related, determinable Tax benefits realized or capable of being realized by the affected Party in relation to the occurrence of such net loss or cost.

ARTICLE 11 CONFIDENTIALITY

11.1 Confidentiality and Restricted Use

- (a) Subject to the terms and conditions of this Agreement, each Receiving Party shall not use the Confidential Information furnished to it by a Disclosing Party or its Representatives for any purpose other than the exercise of its rights and the performance of its obligations under this Agreement (the “**Authorized Purpose**”) and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which will in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.
- (b) The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in this **Article 11**.
- (c) The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a “**Lender Recipient**”), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:
 - (i) be informed by the Receiving Party of the confidential nature of such Confidential Information; and
 - (ii) unless such Representative or Lender Recipient is already bound by a duty of confidentiality to the Receiving Party that is substantially similar to the obligations under this **Article 11**, be directed by the Receiving Party, and such Representative or Lender Recipient shall agree in writing, before receipt of such Confidential Information, to be bound by the obligations of, and to treat such Confidential Information in accordance with the terms and conditions of, this Agreement as if it were a Party hereto.
- (d) The Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or, if so requested in writing by the Disclosing Party, destroy and certify such destruction (such certificate to be signed by an officer of the Receiving Party), all Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party or its Representatives relating to the Confidential Information of the Disclosing Party, within 30 days of a written request by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Confidential Information only for administering compliance with this Agreement or if required to retain such information for regulatory purposes, but such copies must be securely maintained and segregated from the other records of the Receiving Party.

- (e) The obligations of confidentiality with respect to Confidential Information shall endure for the Term, provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the Term for such additional period as such information remains a Trade Secret.
- (f) Notwithstanding the foregoing, the obligations set forth in this Agreement shall not extend to any information which:
 - (i) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this **Article 11** or another obligation of confidentiality;
 - (ii) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this **Article 11** or another obligation of confidentiality;
 - (iii) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;
 - (iv) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;
 - (v) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this **Article 11** or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or
 - (vi) is approved in writing in advance for release by the Disclosing Party.
- (g) Each Party agrees that it shall ensure compliance with and be liable for any violation of this **Article 11** by that Party's Representatives and that it shall indemnify and hold harmless the other Parties and their Representatives against any Losses, costs, damages and Claims suffered or incurred by or asserted against such Parties or their Representatives flowing from such violation. This indemnity will survive termination of this Agreement.
- (h) Each Receiving Party agrees that each Disclosing Party may be irreparably damaged by any unauthorized disclosure, communication or use of a Disclosing Party's Confidential Information by a Receiving Party or its Representatives and that monetary damages may not be sufficient to remedy any breach by a Receiving Party or its Representatives of any term or provision of this **Article 11** and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to any other remedy available at law or in equity.

11.2 Acknowledgments

Each Receiving Party acknowledges and agrees with each Disclosing Party that:

- (a) the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;
- (b) the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;
- (c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and
- (d) no licence to the Receiving Party under any copyright, trademark, patent or other intellectual property right is either granted or implied by the conveying of Confidential Information to the Receiving Party.

11.3 Disclosures Required by Law

- (a) Nalcor and its Affiliates are at all times subject to the provisions of NL legislation as such legislation may be amended or varied, including, but not limited to, the *Access to Information and Protection of Privacy Act* (NL) ("**ATIPPA**"). The Parties acknowledge that Nalcor and its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of this Agreement.
- (b) Nalcor hereby acknowledges and agrees that the Confidential Information disclosed by Emera and its Affiliates is "commercially sensitive information" as defined in the *Energy Corporation Act* (NL) and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to Emera or its Affiliates. It is further acknowledged and agreed that Emera has represented to Nalcor that the Confidential Information disclosed by it and its Affiliates is treated consistently in a confidential manner by them and is customarily not provided to their competitors. Therefore, pursuant to Section 5.4(1)(b) of the *Energy Corporation Act*, Nalcor shall refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of Newfoundland Trial Division, may occur. To the extent permitted by ATIPPA, Nalcor shall argue against disclosure, support Emera in any submission concerning its entitlement to be represented, and make arguments in support of non-disclosure at each step in this process.

- (c) If the Receiving Party or any of its Representatives is required by Applicable Law or requested by any Person pursuant to ATIPPA, or by any Authorized Authority under any circumstances, to disclose any Confidential Information, then, subject to Applicable Law, the Receiving Party may only disclose Confidential Information if, to the extent permitted by Applicable Law, it has:
- (i) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;
 - (ii) obtained a written legal opinion that disclosure is required;
 - (iii) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;
 - (iv) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;
 - (v) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and
 - (vi) disclosed only that portion of the Confidential Information that is legally required to be disclosed.
- (d) Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of this Agreement, provided that all relevant obligations under this **Article 11**, including **Section 11.3(c)**, have been met. For the avoidance of doubt, Nalcor and its Affiliates will have no liability to Emera or its Affiliates for any disclosure of Confidential Information that Nalcor or any of its Affiliates is lawfully required to make pursuant to ATIPPA.
- (e) In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:
- (i) any proceeding between Nalcor or an Affiliate of Nalcor, on the one hand, and Emera or an Affiliate of Emera, on the other hand; or
 - (ii) any proceeding between a Receiving Party and another Person.

In connection with the foregoing, every Receiving Party shall consent to such an order of confidentiality upon request of the relevant Disclosing Party. Any Confidential Information that is required to be disclosed but is subject to an order of confidentiality or similar order shall continue to be Confidential Information subject to protection under this Agreement.

11.4 Disclosure of Agreement

Each Party hereby agrees to the other Party making this Agreement public at any time and from time to time after the Effective Date.

ARTICLE 12 ASSIGNMENT AND CHANGE OF CONTROL

12.1 Nalcor Assignment Rights

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Nalcor Rights**”), without the prior written consent of Emera, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera substantially in the form attached hereto as **Schedule 1**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor will be deemed to be an assignment of Nalcor Rights requiring the prior written consent of Emera pursuant to **Section 12.1(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 12.1** will be null and void.

12.2 Emera Assignment Rights

- (a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Emera Rights**”) without the prior written consent of Nalcor, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that

Emera enters into an agreement with Nalcor substantially in the form attached hereto as **Schedule 1**.

- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an Emera Affiliate Assignee that would result in such Emera Affiliate Assignee no longer being an Affiliate of Emera will be deemed to be an assignment of Emera Rights requiring the prior written consent of Nalcor pursuant to **Section 12.2(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 12.2** will be null and void.

ARTICLE 13 DISPUTE RESOLUTION

13.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 2** (the “**Dispute Resolution Procedure**”).
- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 13**, without prejudice to either Party’s rights pursuant to this Agreement.

13.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the “**Claiming Party**”) intending to assert a Claim against the other Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.
- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied

upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

- (c) Disputed Invoices - This **Section 13.2** does not apply to Disputes relating to invoices pursuant to **Article 4**, which shall be governed by **Section 4.5**.

ARTICLE 14

REPRESENTATIONS, WARRANTIES AND COVENANTS

14.1 Nalcor Representations and Warranties

Nalcor represents and warrants to Emera that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Nalcor and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are [no Legal Proceedings pending or, to its Knowledge, threatened against it] that may materially adversely affect its ability to perform its obligations under this Agreement; *[Or, set out Legal Proceedings, if any]*
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings

the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; *[Set out any required Regulatory Approvals]* and

- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

14.2 Emera Representations and Warranties

Emera represents and warrants to Nalcor that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Emera and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are [no Legal Proceedings pending or, to its Knowledge, threatened against it] that may materially adversely affect its ability to perform its obligations under this Agreement; *[Or, set out Legal Proceedings, if any]*
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; *[Set out any required Regulatory Approvals]* and

- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Vice President, Strategic Planning and Business
Development
Fax: (709) 737-1782

with a copy to:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Corporate Secretary
Fax: (709) 737-1782

To Emera:

[replace with NSPI contact information, if applicable]
Emera Inc.
1223 Lower Water Street
Halifax, NS
B3J 3S8
Attention: Corporate Secretary
Fax: (902) 428-6112

with a copy to:

NSP Maritime Link Incorporated
9 Austin St.
St. John's, NL A1B 4C1
Attention: President
Fax: (709) 722-2083

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Either Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Party.

15.2 **Prior Agreements**

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof (including the Energy Access Agreement). There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the Formal Agreements.

15.3 **Counterparts**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

15.4 **Expenses of Parties**

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

15.5 **Announcements**

No announcement with respect to this Agreement shall be made by either Party without the prior approval of the other Party. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Party before making any such announcement and gives due consideration to the views of the other Party with respect thereto. Both Parties shall use reasonable efforts to agree on the text of any proposed announcement.

15.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the subject matter of this Agreement shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting either Party as the agent or legal representative of the other Party for any purpose nor to permit either Party to enter into agreements or incur any obligations for or on behalf of the other Party.

15.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

15.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

15.9 Time of the Essence

Time shall be of the essence.

15.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by both Parties.

15.11 No Waiver

Any failure or delay of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

15.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

15.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

15.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

15.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

15.16 Capacity of Nalcor

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy,
in the presence of:

NALCOR ENERGY

By: _____
Name:
Title:

Name:

By: _____
Name:
Title:

We have authority to bind the corporation.

Executed and delivered by [Emera Inc.],
in the presence of:

EMERA INC.

By: _____
Name:
Title:

Name:

By: _____
Name:
Title:

We have authority to bind the company.

[replace with NSPI signature block, if applicable]

BALANCING SERVICE AGREEMENT

SCHEDULE 1

FORM OF ASSIGNMENT AGREEMENT

[Prior to finalization, the form of assignment agreement will be attached, substantially in the form of the version that is attached to the Energy Access Agreement as Schedule 6 thereto]

BALANCING SERVICE AGREEMENT

SCHEDULE 2

DISPUTE RESOLUTION PROCEDURE

[Prior to finalization, the Dispute Resolution Procedure will be attached, in the form of the version that is attached to the Energy Access Agreement as Schedule 7 thereto]

ENERGY ACCESS AGREEMENT

SCHEDULE 6

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF [NAME OF] AGREEMENT

[NTD: Form to be amended as required if only a portion of the Assignor's interest in the Assigned Agreement is being transferred to the Assignee, including appropriate amendments to Sections 2.1, 2.2 and 2.3.]

THIS ASSIGNMENT AGREEMENT is made effective the ● day of ●, 20__ (**"Effective Date"**)

AMONG:

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown ("**Nalcor**")

- or -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia ("**Emera**")

- or -

NOVA SCOTIA POWER INC., a company incorporated under the laws of the Province of Nova Scotia ("**NSPI**")

- and -

AFFILIATE of NALCOR or EMERA or NSPI, a *[type of entity and jurisdiction or statute of incorporation or formation]* ("**Assignee**")

- and -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia ("**Emera**")

- or -

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown ("**Nalcor**")

- or -

NOVA SCOTIA POWER INC., a company incorporated under the laws of the Province of Nova Scotia ("**NSPI**")

[NTD: Need to add Affiliate of Nalcor, Emera or NSPI, as applicable, as party in event of prior assignments.]

WHEREAS:

- A. Nalcor Energy, Emera Inc. and NSPI entered into an Energy Access Agreement dated April 13, 2015 (the **“Assigned Agreement”**) relating to the provision of access to market-priced Energy by Nalcor to NSPI;
- B. **[NTD: Need to add any required references to other assigned rights];**

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

“Affiliate” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person, provided however that the NL Crown shall be deemed not to be an affiliate of Nalcor;

“Agreement” means this agreement, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of and the terms of all judgments, orders and decrees issued by any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Assigned Agreement” has the meaning set forth in the recitals;

“Assignee” means _____, an Affiliate of the Assignor;

“Assignor” means **[Nalcor/Emera/NSPI or an Affiliate of Nalcor/Emera/NSPI, as applicable];**

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization

or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL, or in Halifax Regional Municipality, NS;

“Consenting Parties” means [Nalcor/Emera/NSPI or, if applicable as a result of prior assignments, specified Affiliates];

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have correlative meanings);

“Dispute Resolution Procedure” has the meaning set forth in **Section 4.1(a)**;

“Effective Date” has the meaning set forth in the commencement of this Agreement;

“Emera” has the meaning set forth in the preamble to this Agreement and includes Emera’s successors and permitted assigns;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Income Tax Act” means the *Income Tax Act* (Canada);

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of

intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Knowledge” means in the case of a Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“NL Crown” means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

“NSPI” has the meaning set forth in the preamble to this Agreement and includes NSPI’s successors and permitted assigns;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

“Parties” means the parties to this Agreement, and **“Party”** means one of them;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL, when referring to the Regular Business Hours of Nalcor, and 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS, when referring to the Regular Business Hours of Emera;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than a tariff or fees in respect of electricity transmission services) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 **Construction of Agreement**

- (a) Interpretation Not Affected by Headings, etc - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”** or **“Section”** followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding

such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

ARTICLE 2 ASSIGNMENT

2.1 Assignment to Affiliate

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Agreement and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Agreement and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Agreement as of the Effective Date and covenants and agrees with the Assignor and each of the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Agreement. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Agreement arising on and in respect of matters occurring after the Effective Date.

2.3 Limitations on Assignment / Assumption

The Assignor reserves to itself and does not assign to the Assignee, and the Assignee does not assume from the Assignor the following rights and/or obligations:

- (a)
- (b)

2.4 Confirmation of Status of Assigned Agreement

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, any of the Consenting Parties are in default of any of their obligations under the Assigned Agreement. The Consenting Parties each hereby confirms to the Assignee that neither it nor, to its Knowledge, the Assignor is in default of any of its obligations under the Assigned Agreement.

2.5 Assignor to Remain Liable

Notwithstanding the foregoing, [Nalcor/Emera/NSPI] expressly acknowledges and agrees that it shall remain liable to each of the Consenting Parties as a primary obligor under the Assigned Agreement to observe and perform all of the conditions and obligations in the Assigned Agreement which the Assignor, and as of the Effective Date the Assignee, are bound to observe and perform.

2.6 [Nalcor/Emera/NSPI] Defaults

The Assignee shall be in default of the Assigned Agreement if at any time:

- (a) [Nalcor/Emera/NSPI] ceases to carry on all or substantially all of its business or, except as permitted under the Assigned Agreement, transfers all or substantially all of its undertaking and assets; or
- (b) an Insolvency Event occurs with respect to [Nalcor/Emera/NSPI].

2.7 Acknowledgement of Consenting Parties

The Consenting Parties each acknowledge, consent to and accept the within assignment and assumption of the Assigned Agreement, subject to the terms and conditions herein and confirms to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Agreement.

2.8 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments

or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and

- (ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.10**.

2.9 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.9(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.10 Invoicing

All invoices issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

2.11 Payment and Offset

- (a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.

- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.12 HST Registration Status

- (a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.
- (b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

2.13 [●]

[Insert any provision required by the Assigned Agreement to be included.]

ARTICLE 3 REPRESENTATIONS AND WARRANTIES

3.1 Assignor and Assignee Representations and Warranties

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to each of the Consenting Parties that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary [corporate] action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are [no Legal Proceedings **NTD: or set out Legal Proceedings, if any**] pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and **[NTD: set out any required Regulatory Approvals]**;
- (g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and
- (h) the Assignee is an Affiliate of the Assignor.

ARTICLE 4 DISPUTE RESOLUTION PROCEDURE

4.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule "7" to the Assigned Agreement (the "**Dispute Resolution Procedure**").
- (b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Assigned Agreement]**

ARTICLE 5 MISCELLANEOUS PROVISIONS

5.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

To Assignor:

[•]

To Assignee:

[•]

To Consenting Parties:

[●]

[●]

[To Nalcor/Emera/NSPI:]

[●]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and be confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Any Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

5.3 Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

5.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

5.5 Announcements

No announcement with respect to this Agreement shall be made by any Party without the prior approval of the other Parties. The foregoing shall not apply to any announcement

by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Parties before making any such announcement and gives due consideration to the views of the other Parties with respect thereto. The Parties shall use reasonable efforts to agree on the text of any proposed announcement.

5.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, this Agreement shall not be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of the other Parties for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of the other Parties.

5.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

5.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all Parties.

5.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the

obligations of the Party giving such consent or approval or otherwise reduce the obligations of a Party receiving such consent or approval.

5.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure; (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

5.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

5.16 [Capacity of Nalcor]

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown. **NTD: Include if Nalcor signing Agreement.]**

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Assignor

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

Assignee

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

[First Consenting Party]

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

[Second Consenting Party]

By: _____

Name:

Title:

By: _____

Name:

Title:

I/We have authority to bind the
[company]/[corporation]

[NTD: Need to add Nalcor, Emera or NSPI, as applicable, in event of prior assignments]

ENERGY ACCESS AGREEMENT

SCHEDULE 7

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Schedule, the definitions set forth in the Articles of Agreement apply and in addition thereto:

“Appointment Date” has the meaning set forth in **Section 6.4**;

“Arbitration Act” means the *Arbitration Act* (Newfoundland and Labrador);

“Arbitration Notice” has the meaning set forth in **Section 5.1(a)**;

“Arbitration Procedure” means the provisions of **Section 5**;

“Arbitrator” means an arbitrator appointed pursuant to the Arbitration Procedure;

“Articles of Agreement” means the main body of the Agreement;

“Chair” means the person elected or appointed to chair the Tribunal;

“Code” means the Commercial Arbitration Code as set out in the *Commercial Arbitration Act* (Canada) as of the Effective Date, a copy of which is attached hereto as **Appendix A**;

“Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party consents to arbitration of the Dispute referred to in the Arbitration Notice;

“Delegate” has the meaning set forth in **Section 6.3(c)**;

“Dispute Context” has the meaning set forth in **Section 6.6**;

“document” includes a film, photograph, videotape, chart, graph, map, plan, survey, book of account, recording of sound, and information recorded or stored by means of any device;

“Expert Determination Procedure” means the provisions of **Section 6**;

“General Dispute” means a Dispute that is not a Specified Dispute;

“Independent Expert” means the Person appointed as such to conduct an expert determination in accordance with the Expert Determination Procedure;

“Information” means all documents and information, including Confidential Information, disclosed by a Party for the purposes of this Dispute Resolution Procedure;

“Initial Meeting” has the meaning set forth in **Section 6.8**;

“Mediation Notice” has the meaning set forth in **Section 4.1(a)**;

“Mediation Procedure” means the provisions of **Section 4**;

“Mediation Response” has the meaning set forth in **Section 4.1(d)**;

“Mediator” means the mediator appointed pursuant to the Mediation Procedure;

“Negotiation Procedure” means the provisions of **Section 3**;

“Non-Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party does not consent to arbitration of the Dispute referred to in the Arbitration Notice;

“Notified Party” has the meaning set forth in **Section 5.1(a)**;

“Notifying Party” has the meaning set forth in **Section 5.1(a)**;

“Referral Notice” has the meaning set forth in **Section 6.1**;

“Referring Party” has the meaning set forth in **Section 6.1**;

“Requesting Party” has the meaning set forth in **Section 4.1(a)**;

“Responding Party” has the meaning set forth in **Section 6.1**;

“Response” has the meaning set forth in **Section 6.9(b)**;

“Review Notice” has the meaning set forth in **Section 3.1**;

“Specified Dispute” means a Dispute required to be finally resolved by expert determination and specified as such in the Articles of Agreement;

“Submission” has the meaning set forth in **Section 6.9(a)**;

“Terms of Reference” has the meaning set forth in **Section 6.4**; and

“Tribunal” means either a single Arbitrator or a panel of Arbitrators, as the case may be, appointed pursuant to the Arbitration Procedure to serve as the arbitrator or arbitrators of a General Dispute.

1.2 Section References

Unless otherwise indicated, all references in this Schedule to a “Section” followed by a number and/or a letter refer to the specified Section of this Schedule.

1.3 **Appendix**

The following Appendix is attached to and incorporated by reference in this Schedule, and is deemed to be part hereof:

Appendix A - *Commercial Arbitration Code (Canada)*

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 **Purpose and Sequence of Dispute Resolution**

The purpose of this Schedule is to set forth a framework and procedures to resolve any Disputes that may arise under the Agreement in an amicable manner, in private and confidential proceedings, and where possible, without resort to litigation. The Parties agree to exclusively utilize the following process to achieve this goal, which shall be undertaken in the following order:

- (a) first, by referring the Dispute to negotiation pursuant to the Negotiation Procedure; and
- (b) in the case of a General Dispute:
 - (i) second, by way of mediation pursuant to the Mediation Procedure; and
 - (ii) third, either:
 - (A) by arbitration pursuant to the Arbitration Procedure where the Parties agree or are deemed to have agreed to arbitration; or
 - (B) by litigation, where the Parties do not agree and are not deemed to have agreed to arbitration pursuant to the Arbitration Procedure; or
- (c) in the case of a Specified Dispute, second by expert determination in accordance with the Expert Determination Procedure.

2.2 **Confidentiality**

- (a) Subject to **Section 2.2(b)**, all Information disclosed by a Party pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure shall be treated as confidential by the Parties and any Mediator, Arbitrator or Independent Expert. Neither the disclosure nor production of Information will represent any waiver of privilege by the disclosing Party. Each Party agrees not to disclose Information provided by the other Party for the purposes hereof to any other Person for any other purpose. Further, such Information shall not be used in any subsequent proceedings without the consent of the Party that disclosed it.

- (b) **Section 2.2(a)** does not prevent a Party from disclosing or using Information not received by it exclusively pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure as and to the extent permitted under Article 14 of the Agreement.

2.3 Interim Measures

Either Party may apply to a court for interim measures to protect its interest during the period that it is attempting to resolve a Dispute prior to the constitution of a Tribunal, including preliminary injunction or other equitable relief concerning that Dispute. The Parties agree that seeking and obtaining any such interim measure will not waive the Parties' obligation to proceed in accordance with **Section 2.1**.

2.4 Parties to Proceedings

- (a) For the purposes of this Schedule and any Dispute submitted for resolution hereunder, any of Nalcor Energy and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively, and any of Emera Inc. and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively. When applicable, in this Schedule references to a "Party" are to either such collective, and references to the "Parties" are to both such collectives.
- (b) Notwithstanding **Section 2.4(a)**, (i) any Notice given by Nalcor or an Affiliate of Nalcor in connection with this Dispute Resolution Procedure shall be given to Emera Inc., if it is a Party, and to all Affiliates of Emera Inc. that are Parties, and (ii) any Notice given by Emera or an Affiliate of Emera in connection with this Dispute Resolution Procedure shall be given to Nalcor Energy, if it is a Party, and to all Affiliates of Nalcor Energy that are Parties.

2.5 Mediator or Arbitrator as Witness

The Parties agree that any Mediator or Arbitrator appointed hereunder shall not be compelled as a witness in any proceedings for any purpose whatsoever in relation to the Agreement.

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by either Party by Notice to the other Party requesting a review under this **Section 3** (a "**Review Notice**"). Each Party shall be afforded a reasonable opportunity to present all relevant Information regarding its position to the other Party's representative. The Parties shall consider the Information provided and seek to resolve the Dispute through negotiation. Negotiations shall be concluded within 15

Business Days from the date of delivery of the Review Notice or within such extended period as may be agreed in writing by the Parties.

3.2 Reservation of Rights

Except to the extent that such negotiations result in a settlement, such negotiations and exchange of Information will be without prejudice and inadmissible against a Party's interest in any subsequent proceedings and neither Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

3.3 Failure of Negotiations

If the Parties have not resolved the Dispute to the satisfaction of both Parties within 15 Business Days after delivery of the Review Notice, or within such extended period as may be agreed in writing by the Parties, negotiations will be deemed to have failed to resolve the Dispute and either Party may then request that the matter be referred to non-binding mediation pursuant to the Mediation Procedure.

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

- (a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the “**Requesting Party**”), by Notice to the other Party given within five Business Days after expiry of the period set out in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a “**Mediation Notice**”) containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.
- (b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.
- (c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:
 - (i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;
 - (ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;
 - (iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;

- (iv) either Party gives Notice to the other Party that it terminates the mediation;
 - (v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;
 - (vi) **Section 4.3(d)** applies; or
 - (vii) the Dispute is settled as provided in **Section 4.4**.
- (d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the “**Mediation Response**”) to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 Appointment of Mediator

Within 10 Business Days after receipt of the Mediation Response by the Requesting Party, the Parties shall attempt to appoint a Mediator to assist the parties in resolving the Dispute. The appointment shall be in writing and signed by the Parties and the Mediator.

4.3 Mediation Process

- (a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.
- (b) The location of the mediation will be St. John’s, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.
- (c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.
- (d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.
- (e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally

(or in such other proportions as they may agree), including the costs of or attributable to the Mediator and the facilities used for the mediation.

4.4 Reservation of Rights

Any mediation undertaken hereunder will be non-binding, and except to the extent a settlement is reached, will be considered without prejudice and inadmissible against a Party's interest in any subsequent proceedings and neither Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

- (a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3**:
 - (i) either Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Party (the “**Notified Party**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, to proceed with resolution of the General Dispute pursuant to **Section 2.1(b)(ii)(B)**.
- (b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.
- (c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.
- (d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.
- (e) Notwithstanding **Sections 5.1(b)**, **5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.
- (f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by

arbitration pursuant to this **Section 5**. The arbitration will be subject to the Arbitration Act and conducted in accordance with the Code, as supplemented and modified by this **Section 5**.

5.2 Provisions Relating to the Arbitration Act and the Code

- (a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.
- (b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.
- (c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the “arbitration agreement”.
- (d) A reference in the Code to “a court or other authority specified in article 6”, will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.
- (e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.
- (f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.
- (g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.
- (h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have both agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.
- (i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 Appointment of Tribunal

- (a) Subject to **Section 5.4**, the arbitration will be heard and determined by three Arbitrators. Each Party shall appoint an Arbitrator of its choice within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration. The Party-appointed Arbitrators shall in turn appoint a third Arbitrator, who shall act as Chair of the Tribunal, within 20 Business Days after the appointment of both Party-appointed Arbitrators. If the Party-appointed Arbitrators cannot reach agreement on a third Arbitrator, or if a Party fails or refuses to appoint its Party-appointed Arbitrator within 20 Business Days after delivery or deemed delivery of the Consent

to Arbitration, the appointment of the Chair of the Tribunal and the third Arbitrator will be made in accordance with Article 11 of the Code.

- (b) Except for the appointment of an Arbitrator pursuant to the Code, the appointment of an Arbitrator must be in writing and accepted in writing by the Arbitrator.

5.4 Arbitration by Single Arbitrator

The arbitration will be heard and determined by one Arbitrator where the Parties agree to arbitration by a single Arbitrator and jointly appoint the Arbitrator within 15 Business Days after the Consent to Arbitration is given or deemed to have been given. If the Parties do not agree to arbitration by a single Arbitrator and appoint the Arbitrator within such time, the arbitration will be heard by three Arbitrators appointed pursuant to **Section 5.3**.

5.5 Procedure

- (a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.
- (b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.
- (c) If the Parties initiate multiple arbitration proceedings under the Agreement and other Formal Agreements, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may, with the written consent of all Parties in all such proceedings, be consolidated into a single arbitration proceeding.
- (d) The Parties may agree as to the manner in which the Tribunal shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing such agreement within 20 Business Days from the date of selection or appointment of the Tribunal, the Tribunal shall promptly and expeditiously conduct the arbitration proceedings in accordance with the Code. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.
- (e) Nothing in this **Section 5** will prevent either Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with the Arbitration Procedure, or to prevent manifestly unfair or unequal treatment of either Party.
- (f) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Schedule or of the Code.

5.6 Awards

- (a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.
- (b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.
- (c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.
- (d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.
- (e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus three percent per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is paid in full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 Settlement

If the Parties settle the Dispute before the Tribunal delivers its written award, the arbitration will be terminated and the Tribunal shall record the terms of settlement in the form of an award made on consent of the Parties.

SECTION 6 – EXPERT DETERMINATION PROCEDURE

6.1 Referral for Expert Determination

Where permitted or required by the Agreement, a Party (the “**Referring Party**”) may by Notice to the other Party (the “**Responding Party**”) require referral of a Specified Dispute to an Independent Expert for determination pursuant to this **Section 6** (the “**Referral Notice**”).

6.2 Qualifications of Independent Expert

Any Independent Expert appointed under this **Section 6** shall be:

- (a) independent of each of the Parties;
- (b) of national or international standing;

- (c) well qualified by education, technical training and experience, and hold the appropriate professional qualifications, to determine the matters in issue in the Specified Dispute; and
- (d) impartial and have no interest or obligation in conflict with the task to be performed as an Independent Expert for the Parties. Without limiting the generality of the foregoing, a conflict will be deemed to exist, unless otherwise agreed in writing by the Parties, if the Independent Expert at any time previously performed work in connection with matters covered by any of the Formal Agreements, or during the preceding three years performed any other work for either of the Parties or any of their Affiliates. Any direct or beneficial equity interest the Independent Expert has in one or more of the Parties or their Affiliates, or *vice versa*, shall be declared by each Party and the Independent Expert prior to the Independent Expert being retained.

6.3 Selection of the Independent Expert

- (a) Within 10 Business Days after delivery of the Referral Notice, each Party shall deliver to the other Party, in a simultaneous exchange, a list of the names of five Persons (ranked 1 - 5 in order of preference, 5 being that Party's first preference) who are acceptable to the Party to act as the Independent Expert. If one Person only is named in both lists, that Person shall be the Independent Expert to determine the Specified Dispute. If more than one Person is named in both lists, the Person with the highest total numerical ranking, determined by adding the rankings from both lists, shall be the Independent Expert to determine the Specified Dispute. In the event of a tie in the rankings, the Person to be the Independent Expert shall be selected by lot from among those of highest equal rank.
- (b) If the Parties fail to select an Independent Expert from the initial lists provided pursuant to **Section 6.3(a)**, the process under **Section 6.3(a)** shall be repeated with a second list of five names from each Party, except that the Parties shall exchange lists within five Business Days after the end of the 10 Business Day period under **Section 6.3(a)**.
- (c) If the Parties fail to select an Independent Expert pursuant to **Section 6.3(a)** or **6.3(b)** or otherwise within 15 Business Days after the Referral Notice is given, within a further period of five Business Days after the end of such 15 day period the Parties shall jointly request the President of ADR Chambers in Toronto, Ontario or his or her designate (the "**Delegate**") to appoint the Independent Expert from a list submitted by the Parties with the request. Each Party may nominate up to three proposed Independent Experts for inclusion on the list. The Parties shall not advise the Delegate which Party nominated a particular nominee. Each Party shall be responsible for one-half of the costs of the Delegate.

6.4 Terms of Reference

Once an Independent Expert is selected pursuant to **Section 6.3**, the Parties shall use commercially reasonable efforts to enter into an appropriate engagement agreement with the Independent Expert (the “**Terms of Reference**”) as soon as practicable, and in any event within 20 Business Days, after selection of the Independent Expert pursuant to **Section 6.3**. Failure of the Parties and the Independent Expert to agree upon the Terms of Reference will be deemed to be a General Dispute and the Terms of Reference will be resolved by a single Arbitrator pursuant to the Arbitration Procedure. The date of execution of the Terms of Reference by all of the Parties and the Independent Expert is herein called the “**Appointment Date**”.

6.5 Information Provided to Independent Expert

For the purpose of the Expert Determination Procedure, the Parties shall provide to the Independent Expert the following within five Business Days after the Appointment Date:

- (a) a copy of the Agreement, including the Schedules;
- (b) copies of or full access to all documents relevant to the Specified Dispute to be determined by the Independent Expert; and
- (c) other data and reports as may be mutually agreed by the Parties.

6.6 Dispute Context

The Independent Expert shall review and analyze, as necessary, the materials provided to it by the Parties pursuant to **Section 6.5**. The Independent Expert shall make its determination pursuant to the Terms of Reference based upon the materials provided by the Parties and in accordance with the Article, Section or Schedule of the Agreement under which the Specified Dispute to be determined arose (the “**Dispute Context**”).

6.7 No ex parte Communication

No communication between the Independent Expert and either of the Parties shall be permitted from the Appointment Date until after delivery of the Independent Expert’s final decision except:

- (a) with the approval of both Parties;
- (b) as provided by this **Section 6**; or
- (c) to address strictly administrative matters.

All communications permitted by this **Section 6.7** between either Party and the Independent Expert shall be conducted in writing, with copies sent simultaneously to the other Party in the same manner.

6.8 Initial Meeting and Joint Presentations by the Parties

Within 10 Business Days after the Appointment Date, the Independent Expert and the Parties shall attend an initial informational meeting (the “**Initial Meeting**”) in St. John’s, Newfoundland and Labrador, or at such other location as may be mutually agreed by the Parties, at a time, date and location as determined by the Independent Expert, at which the Parties shall provide an overview of the Specified Dispute to be determined, review the Expert Determination Procedure, and establish a timetable and deadlines for the Independent Expert’s review, all of which are to be consistent with the Agreement.

6.9 Written Submissions and Responses

- (a) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after the Initial Meeting, each Party shall provide to the Independent Expert a written submission (a “**Submission**”) respecting its interpretation and evaluation of the Specified Dispute.
- (b) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after receipt of the other Party’s Submission, each Party shall have the opportunity to provide comments on the other Party’s Submission by written submissions (a “**Response**”) provided to the Independent Expert and the other Party.
- (c) The Parties shall provide any Information deemed necessary by the Independent Expert to complete the evaluation required pursuant to this **Section 6**.
- (d) A Party that fails to submit a Submission or a Response to the Independent Expert within the time allowed by this **Section 6.9** will be deemed to have waived its right to make a Submission or Response, as the case may be.

6.10 Independent Expert Clarifications

- (a) Following receipt of the Submissions and Responses, the Independent Expert may, at its discretion, seek any number of clarifications with respect to any aspect of either Party’s Submission or Response. Such requests for clarifications shall be made by the Independent Expert in writing and the clarifications by the Parties shall be made in writing as requested by the Independent Expert, provided that the other Party shall be provided with a copy of such requests and clarifications.
- (b) The purpose of such clarifications will be to allow the Independent Expert to fully understand the technical and/or financial basis and methodologies used in the preparation of the Submission and Response of each Party, it being understood that each Party’s Submission and Response will be the primary basis upon which the Independent Expert shall make its determination.
- (c) All requests for clarifications and all questions in relation thereto will be initiated or posed exclusively by the Independent Expert to the Party from whom clarification is

sought as seen fit by the Independent Expert, in its sole discretion, and free of any interruption or interjection by the other Party. Neither Party will have any right to cross-examine the other Party in respect of such Party's Submission or Response or its responses to the Independent Expert pursuant to this **Section 6.10**.

6.11 Method of Evaluation

- (a) The Independent Expert's assessment shall include the method of evaluation elements set out in the Dispute Context.
- (b) The Independent Expert's assessment, including its economic model, cash flows and analysis, if any, will be made available to the Parties.

6.12 Decision and Presentation of Report

The Independent Expert shall complete its assessment and deliver a written decision of its determination of the Specified Dispute within 40 Business Days after the Independent Expert's receipt of the Responses.

6.13 Costs of Expert Determination

Each Party shall be responsible for one-half of the costs of the Independent Expert. Each Party shall bear its own costs related to the expert determination.

6.14 Effect of Determination

- (a) The Independent Expert's determination pursuant to this **Section 6** will be final and binding upon the Parties and not reviewable by a court for any reason whatsoever.
- (b) The Independent Expert is not an arbitrator of the Specified Dispute and is deemed not to be acting in an arbitral capacity. The Independent Expert's determination pursuant to this **Section 6** is not an arbitration under the Arbitration Act or any other federal or provincial legislation.

6.15 Settlement

If the Parties settle the Specified Dispute before the Independent Expert delivers its written decision, the expert determination will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

**Appendix A
to Dispute Resolution Procedure**

COMMERCIAL ARBITRATION CODE

Appendix A

COMMERCIAL ARBITRATION CODE

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

Note: The word "international", which appears in paragraph (1) of article 1 of the Model Law, has been deleted from paragraph (1) of article 1 below. Paragraphs (3) and (4) of article 1, which contain a description of when arbitration is international, are deleted. Paragraph (5) appears as paragraph (3).

Any additions or substitutions to the Model Law are indicated by the use of italics.

Except as otherwise indicated, the material that follows reproduces exactly the Model Law.

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

- (1) This *Code* applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.
- (2) The provisions of this *Code*, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.
- (3) This *Code* shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this *Code*.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this *Code*:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;
- (d) where a provision of this *Code*, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this *Code* refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this *Code*, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
- (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this *Code* from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

ARTICLE 5
EXTENT OF COURT INTERVENTION

In matters governed by this *Code*, no court shall intervene except where so provided in this *Code*.

ARTICLE 6
COURT OR OTHER AUTHORITY FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE AND SUPERVISION

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by *the Federal Court or any superior, county or district court*.

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(c) a party fails to act as required under such procedure, or

(d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(e) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12 GROUNDS FOR CHALLENGE

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

ARTICLE 13 CHALLENGE PROCEDURE

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

ARTICLE 15 APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16 COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17 POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18 EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

(1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 20
PLACE OF ARBITRATION

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 22
LANGUAGE

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

ARTICLE 25
DEFAULT OF A PARTY

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of *Canada* assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

ARTICLE 29

DECISION-MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

ARTICLE 30

SETTLEMENT

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31

FORM AND CONTENTS OF AWARD

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

ARTICLE 32
TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
- (a) the party making the application furnishes proof that:
- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of *Canada*; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code*; or
- (b) the court finds that:
- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or
 - (ii) the award is in conflict with the public policy of *Canada*.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of *Canada*, the party shall supply a duly certified translation thereof into such language.

ARTICLE 36 GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

- (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- (ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or
- (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

- (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or
- (ii) the recognition or enforcement of the award would be contrary to the public policy of *Canada*.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

NALCOR ENERGY

and

EMERA INC.

**AMENDED AND RESTATED
ENERGY AND CAPACITY AGREEMENT**

July 31, 2014

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION	2
1.1 Definitions	2
1.2 Construction of Agreement	18
1.3 Conflicts between Parts of Agreement	20
1.4 Applicable Law and Submission to Jurisdiction	20
1.5 Electricity Source	21
1.6 Inter-Relationship with Original ECA	21
1.7 Schedules and Exhibits	21
ARTICLE 2 PURCHASE AND SALE OF ENERGY	22
2.1 Purchase and Sale of Energy During Initial Term	22
2.2 Title, Ownership Risk and Responsibility	22
2.3 GHG Emissions and Credits	22
2.4 Safety	23
2.5 Planned Maintenance Periods	23
2.6 [Intentionally deleted]	23
2.7 Subsequent Term(s)	23
ARTICLE 3 TAXES	24
3.1 Supplies and Payments Exclusive of Taxes	24
3.2 Determination of Value for Tax Compliance Purposes	26
3.3 Invoicing	26
3.4 Payment and Offset	26
3.5 HST Registration Status and Residency	26
3.6 Cooperation to Minimize Taxes	27
3.7 Additional Tax Disclosure	27
3.8 Prohibited Tax Disclosure	28
3.9 Withholding Tax	28
3.10 Tax Indemnity	28
3.11 Additional Tax Indemnity	29
3.12 Assignment – Tax Requirements	29
ARTICLE 4 MUSKRAT FALLS PLANT AND LABRADOR-ISLAND LINK	29
4.1 Construction of Muskrat Falls Plant and Labrador-Island Link	29
4.2 Operation and Maintenance, Records	32
ARTICLE 5 INSURANCE	33
5.1 Insurance Program	33
5.2 Coverages, Limits, Deductibles and Exclusions	33
5.3 Provisions to be Included in Insurance Policies	34
5.4 Lender Requirements	34
5.5 Evidence of Insurance	34
5.6 Placement of Required Insurance	35
5.7 Effect of Failure to Insure	35

5.8	Site Visits	35
5.9	Corporate Policies.....	35
ARTICLE 6 TERM AND TERMINATION		35
6.1	Term.....	35
6.2	Termination of Agreement	35
6.3	Extended Force Majeure	36
6.4	Effect of Termination	36
ARTICLE 7 PERMITS, LICENSES AND APPLICABLE LAW		37
7.1	Licences and Compliance with Law	37
ARTICLE 8 DEFAULT AND REMEDIES.....		37
8.1	Nalcor Events of Default	37
8.2	Emera Remedies upon Nalcor Event of Default	38
8.3	Failure to Deliver or Accept - Forgivable Non Delivery.....	39
8.4	Nalcor Failure to Deliver - Curable	39
8.5	Scheduling Late Deliveries.....	40
8.6	Nalcor's Failure to Deliver – Not Curable	41
8.7	Equitable Relief.....	43
8.8	Emera Events of Default	43
8.9	Nalcor Remedies upon Emera Event of Default	44
8.10	Suspension and Deemed Delivery of the Nova Scotia Block.....	45
8.11	Other Rights.....	46
ARTICLE 9 INVOICING AND PAYMENT		46
9.1	Invoices.....	46
9.2	Disputed Amounts.....	47
9.3	Time and Method of Payment	47
9.4	Effect of Payment	47
9.5	Resolution of Objections	47
9.6	Overpayments	47
9.7	Interest on Overdue Amounts	47
9.8	Waiver of Unbilled Charges	48
ARTICLE 10 FORCE MAJEURE AND CURTAILMENT		48
10.1	Effect of Invoking Force Majeure and Notice	48
10.2	Allocation of Muskrat Falls Output.....	49
10.3	Allocation of Nova Scotia Block due to Transmission System Curtailment	49
10.4	No New Firm Sales during a Curtailment	50
10.5	Failure to Deliver Not Excusable.....	50
10.6	Requirements of Good Utility Practice.....	50
ARTICLE 11 ASSIGNMENT AND CHANGE OF CONTROL.....		50
11.1	Nalcor Assignment Rights.....	50

11.2	Emera Assignment Rights	51
11.3	Change of Ownership or Control – Nova Scotia Block.....	51
11.4	Assignment of the Maritime Link (Emera) Transmission Service Agreement	51
11.5	Nalcor Option	52
ARTICLE 12 DISPUTE RESOLUTION		52
12.1	General	52
12.2	Procedure for Inter-Party Claims	52
ARTICLE 13 LIABILITY AND INDEMNITY		53
13.1	Nalcor Indemnity	53
13.2	Emera Indemnity	53
13.3	Own Property Damage	53
13.4	Indemnification Procedure	54
13.5	Insurer Approval	56
ARTICLE 14 LIMITATION OF DAMAGES		56
14.1	Limitations and Indemnities Effective Regardless of Cause of Damages.....	56
14.2	No Consequential Loss	56
14.3	Liquidated Damages	56
14.4	Insurance Proceeds.....	57
14.5	No Breakage Or Other Similar Financing Costs Permitted	57
ARTICLE 15 REPRESENTATIONS AND WARRANTIES		57
15.1	Nalcor Representations and Warranties.....	57
15.2	Emera Representations and Warranties.....	58
ARTICLE 16 CONFIDENTIALITY		59
16.1	Incorporation of Project NDA	59
16.2	Disclosure of Agreement	59
ARTICLE 17 MISCELLANEOUS PROVISIONS		60
17.1	Notices.....	60
17.2	Prior Agreements.....	61
17.3	Counterparts.....	61
17.4	Expenses of Parties	61
17.5	Announcements	61
17.6	Relationship of the Parties	62
17.7	Further Assurances	62
17.8	Severability	62
17.9	Time of the Essence	62
17.10	Amendments	62
17.11	No Waiver	62
17.12	No Third Party Beneficiaries	63
17.13	Survival	63

17.14	Waiver of Sovereign Immunity.....	63
17.15	Successors and Assigns.....	63
17.16	Capacity of Nalcor.....	63

Schedules:

Schedule 1	-	Formal Agreements
Schedule 2	-	[Intentionally deleted]
Schedule 3	-	Calculation of Transmission Losses
Schedule 4	-	Calculation of Supplemental Energy
Schedule 5	-	Nova Scotia Block Energy Management
Schedule 6	-	Dispute Resolution Procedure
Schedule 7	-	Form of Assignment Agreement

**AMENDED AND RESTATED
ENERGY AND CAPACITY AGREEMENT**

THIS AMENDED AND RESTATED ENERGY AND CAPACITY AGREEMENT is made effective the 31st day of July, 2014 (the “**A&R Effective Date**”).

B E T W E E N:

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being Chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown (“**Nalcor**”)

- and -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia (“**Emera**”)

WHEREAS:

- A. the Parties have entered into a term sheet dated November 18, 2010 (the “**Term Sheet**”) confirming their common understanding of the purpose, process and timing for transmission services and the supply and delivery of power and energy from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England;
- B. this Agreement is one of the Formal Agreements contemplated by the Term Sheet and is to provide for the purchase by Emera and the sale by Nalcor of the Nova Scotia Block during the Initial Term;
- C. on July 31, 2012 Nalcor and Emera entered into the original version of this Agreement (the “**Original ECA**”);
- D. contemporaneously with the execution and delivery of this Agreement, Nalcor and Emera are entering into an amended and restated Maritime Link – Joint Development Agreement (the “**A&R ML-JDA**”); and
- E. Nalcor and Emera wish to amend and restate the Original ECA to update certain provisions and make other amendments for consistency with the A&R ML-JDA;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and, subject to **Section 1.2(h)**, in the Schedules:

“A&R Effective Date” has the meaning set forth in the commencement of this Agreement;

“A&R ML-JDA” has the meaning set forth in the preamble to this Agreement;

“APT” means Atlantic Prevailing Time;

“Affiliate” means, with respect to any Person, any other Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such Person; provided however that the NL Crown shall be deemed not to be an Affiliate of Nalcor;

“Agreement” means this agreement including all Schedules, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“Applicable Law” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of and the terms of all judgments, orders and decrees issued by any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“Associated Capacity” means Capacity as delivered from the MFP, less Transmission Losses, and associated with the Nova Scotia Block that can be called upon within 10 minutes’ notice subject to the provisions of **Schedule 5**. During the daily Peak Hours it is equal to the average hourly Energy delivered to Emera calculated as equal to the Nova Scotia Block annual Energy amount (for greater certainty, excluding Supplemental Energy) divided by the number of days in the year and divided by 16. During the daily Off-Peak Hours when the Supplemental Energy, if any, is being delivered it is equal to the average hourly Energy supplied to Emera. It is calculated as equal to the annual Supplemental Energy amount divided by the number of days in the Winter Period and divided by eight;

“Authorized Authority” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other

securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“Base Energy” has the meaning set forth in Section 5(a)(i) of **Schedule 5**;

“Block A Undelivered Energy” has the meaning set forth in **Section 8.3**;

“Block B Undelivered Energy” has the meaning set forth in **Section 8.4(a)**;

“Business Day” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL, or in Halifax Regional Municipality, NS;

“Canadian GAAP” means generally accepted accounting principles as defined by the Canadian Institute of Chartered Accountants or its successors, as amended or replaced by international financial reporting standards or as otherwise amended from time to time;

“Capacity” means the capability to provide electrical power, measured and expressed in MW;

“Claiming Party” has the meaning set forth in **Section 12.2(a)**;

“Claims” means any and all Losses, claims, actions, causes of action, demands, fees (including all legal and other professional fees and disbursements, court costs and experts’ fees), levies, Taxes, judgments, fines, charges, deficiencies, interest, penalties and amounts paid in settlement, whether arising in equity, at common law, by statute, or under the law of contracts, torts (including negligence and strict liability without regard to fault) or property, of every kind or character;

“Compensation Damages” has the meaning set forth in **Section 8.6(a)**;

“Compensation Energy” has the meaning set forth in **Section 8.4(a)**;

“Compensation Event” means an event deemed to be or constituted as a Compensation Event in **Section 8.6(a)**;

“Compensation Value” has the meaning set forth in **Section 8.6(b)**;

“Confidential Information” has the meaning given to such term in the Project NDA;

“Confirmation Notice” has the meaning set forth in **Section 4.1(b)(ii)(B)(3)**;

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all

other cases (and the terms **“Controlled by”** and **“under common Control with”** have correlative meanings);

“Cross Default Amount” has the meaning set forth in **Section 8.10(a)**;

“Defined Assets” means the Muskrat Falls Plant, the Labrador-Island Link, the Labrador Transmission Assets and the Maritime Link;

“Delivery Day” has the meaning set forth in **Section 4.1(b)(ii)(B)(3)**;

“Delivery Point” means the point of interconnection of the Maritime Link and the bulk energy transmission system in NS at the 345 kV side of the HVdc converter transformers at Woodbine, NS;

“Delivery Week” has the meaning set forth in **Section 4.1(b)(ii)(B)**;

“Dispute” means any dispute, controversy or claim of any kind whatsoever arising out of or relating to this Agreement, including the interpretation of the terms hereof or any Applicable Law that affects this Agreement, or the transactions contemplated hereunder, or the breach, termination or validity thereof;

“Dispute Resolution Procedure” has the meaning set forth in **Article 12**;

“ECA Loss Adjustment” has the meaning set forth in Section 4(d) of **Schedule 3**;

“Effective Date” means July 31, 2012;

“Emera” has the meaning set forth in the preamble to this Agreement and includes Emera’s successors and permitted assigns;

“Emera Affiliate Assignee” means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 11.2**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

“Emera Default” has the meaning set forth in **Section 8.8**;

“Emera Group” has the meaning set forth in **Section 13.1**;

“Emera Rights” has the meaning set forth in **Section 11.2(a)**;

“Encumbrance” means any security interest, mortgage, charge, pledge, hypothec, lien, restriction, option, adverse claim, right of others or other encumbrance of any kind, but does not include inchoate statutory liens or trusts;

“Energy” means electrical energy measured and expressed in MWh;

“Estimated Average Marginal MWh Cost” means the average Marginal Cost Rate, in dollars per MWh, for all hourly periods during the 15 Business Days prior to and after each

applicable day (including the day of non-delivery) during which Nalcor fails to deliver Energy as required under this Agreement;

“Estimated Average Market MWh Cost” means the average day-ahead market price, in dollars per MWh, at the node utilized to determine the Market Price Equivalent Cost for all hourly periods during the 15 Business Days prior to and after each applicable day (including the day of non-delivery) during which Nalcor fails to deliver Energy as required under this Agreement, less the transmission Tariff Charges that would have been incurred to deliver an equivalent quantity of Energy from the Muskrat Falls Plant to the applicable node during such hours;

“Excess Transmission Capacity” has the meaning set forth in Section 3(b) of **Schedule 5**;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“Extended Force Majeure Period” has the meaning set forth in **Section 6.3(a)(ii)**;

“First Commercial Power” means the date following the Nalcor Commercial Operation Date and the ML Commercial Operation Date, upon which Nalcor commences delivery of the Nova Scotia Block to Emera at the Delivery Point in accordance with this Agreement;

“First Contingency Loss” means the largest capacity outage including any assigned ten-minute reserve which would result from the loss of a single element from a state when all elements were in service;

“Force Majeure” means an event, condition or circumstance (each, an **“event”**) beyond the reasonable control of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder. Provided that the foregoing conditions are met, **“Force Majeure”** may include:

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, an epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) breakage or an accident or other inadvertent action or inability to act causing material physical damage to, or materially impairing the operation of, or access to, any of the Defined Assets or the Island Interconnected System or any machinery or

equipment comprising part of or used in connection with any of the Defined Assets or the Island Interconnected System;

- (e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force, or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the delivery of the Nova Scotia Block, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization;
- (f) where claimed by Nalcor, the inability of the Maritime Link to receive, transmit or deliver Energy under the terms of the Maritime Link (Emera) Transmission Service Agreement;
- (g) a Government Action of General Application;
- (h) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of the Nova Scotia Block that is required by the applicable System Operator for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices; and
- (i) any "Curtailment" or "event of Force Majeure", as those terms are defined in the NS OATT, with respect to the Transmission System or the Nova Scotia Transmission System. For greater certainty, an event will not constitute Force Majeure under this Agreement solely because it meets the definition of force majeure or curtailment in any transmission agreement to which Emera is not a party unless it also meets the definition of "Curtailment" or "event of Force Majeure" in the NS OATT,

but the following shall not be considered a Force Majeure event:

- (i) lack of finances or changes in economic circumstances of a Party;
- (ii) if the event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure;
- (iii) if the event relied upon results from an Authorized Authority requiring a Party to apply applicable NERC and NPCC standards relating to HVdc interconnections between bulk energy systems and the Party so required fails to apply such standards;
- (iv) any delay in the settlement of any Dispute;
- (v) any lack of precipitation resulting in low water runoff into the Churchill River watershed upstream of the MFP; and
- (vi) a Government Action;

“Forecast Notice” has the meaning set forth in **Section 4.1(b)(ii)(B)(1)**;

“Forgivable Event” means a Force Majeure, a Planned Maintenance Period, a Safety Event or an action required to be taken by a Party to comply with Good Utility Practice;

“Formal Agreements” means the agreements listed in **Schedule 1**;

“GHG Credits” means greenhouse gas credits or allowances, including all attributes associated with renewable energy, associated with the displacement of generation from greenhouse gas emitting facilities in NS resulting from the Energy and Associated Capacity produced by the Muskrat Falls Plant or any other renewable energy source used to provide the Nova Scotia Block;

“Good Utility Practice” means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods, or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods, or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

“Government Action” means a measure or measures of any nature or kind, taken directly or indirectly by NL after Sanction by Emera, the effect of which is to cause Emera to be deprived of the delivery or enjoyment of, or access to, the Nova Scotia Block and includes a measure or measures which:

- (a) materially increases the costs that Emera would reasonably be expected to incur under this Agreement; or
- (b) materially diminishes the value to Emera of the Nova Scotia Block that it is entitled to receive from Nalcor pursuant to this Agreement.

Government Action shall not include a measure or measures taken by NL which is:

- (a) consented to in writing by Emera; or

(b) a Government Action of General Application.

“Government Action of General Application” means a non-discriminatory measure or measures of general application that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment; such measures include an action under current or future legislation;

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“ISO-NE” means ISO New England Inc. or any successor system operator with responsibility for operating the bulk energy transmission system in New England;

“ISO-NE Tariff” means the Transmission, Markets and Services Tariff issued by the ISO-NE, as it may be amended, restated, reissued or replaced from time to time;

“Income Tax Act” means the *Income Tax Act* (Canada);

“Indemnified Party” has the meaning set forth in **Section 13.4(a)**;

“Indemnitor” has the meaning set forth in **Section 13.4(a)**;

“Initial Term” means the period of time commencing at First Commercial Power and ending on the 35th anniversary of First Commercial Power or at such later time as the Initial Term may be extended pursuant to **Section 8.5**;

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding-up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they

come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Inter-Provincial Agreement” means the agreement dated July 31, 2012 between Nalcor, Emera, NS and NL setting forth the commitments of NS and NL in respect of Government Action;

“Island Interconnected System” means the bulk energy transmission system on the island portion of NL owned and operated by Newfoundland and Labrador Hydro but, for greater certainty, excluding any part of the Labrador-Island Link or the Maritime Link;

“Joint Operations Agreement” or **“JOA”** means the agreement dated July 31, 2012 between Nalcor and Emera relating to the operation and maintenance of the Labrador Transmission Assets, the Labrador-Island Link and the Maritime Link;

“Knowledge” means in the case of either Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Labrador-Island Link” or **“LIL”** means the transmission facilities to be constructed by or on behalf of the Labrador-Island Link Limited Partnership from central Labrador to Soldiers Pond, NL;

“Labrador-Island Link Limited Partnership” has the meaning set forth in the NLDA;

“Labrador Transmission Assets” or **“LTA”** means the transmission facilities to be constructed by an Affiliate of Nalcor between the Muskrat Falls Plant and the generating plant located at Churchill Falls, NL;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“Losses” means any and all losses (other than losses of Energy normally incurred in the transmission of Energy), damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

“MFP Commissioning Date” means the date of completion of the start-up and testing activities required to demonstrate that three generating units at the MFP are ready to reliably operate in accordance with their design criteria;

“MFP Development Activities” has the meaning set forth in the NLDA;

“MFP Preliminary Energy” has the meaning set forth in **Section 4.1(b)**;

“ML Commercial Operation” means the availability of the Maritime Link for delivery of the Nova Scotia Block, and for provision of transmission services pursuant to the Maritime Link Transmission Service Agreements;

“ML Commercial Operation Date” has the meaning of “Commercial Operation Date” set forth in the ML-JDA;

“ML Commissioning” means the start-up and testing activities required to demonstrate that the Maritime Link is ready for ML Commercial Operation;

“ML O&M Costs” has the meaning set forth in the JOA;

“MW” means megawatt;

“MWh” means MW hours;

“Marginal Cost Energy” means an amount of Energy that Nalcor is obliged to deliver to Emera pursuant to **Section 8.4(a)(ii)** calculated by multiplying the amount of Block B Undelivered Energy by the Marginal Cost Rate and dividing the result by the Estimated Average Marginal MWh Cost;

“Marginal Cost Rate” means the rate in dollars per MWh, which is equal to NSPI's cost of generating or purchasing the MWh of Energy not delivered by Nalcor during the

corresponding hours in which Nalcor does not deliver Block B Undelivered Energy, as calculated by Emera hourly, and being either of:

- (a) the delivered cost to NSPI of purchased Energy if NSPI actually purchased such Energy; or
- (b) if NSPI did not actually purchase Energy as is described in paragraph (a), the UARB-approved methodology for determining the hourly cost per MWh of NSPI to produce Energy which takes into account matters such as current capacity, forecast system load, the current fuel prices and system conditions; provided however that if at any time no such methodology is in use, a substitute methodology agreed by the Parties, or failing such agreement, the substitute methodology shall be a Specified Dispute; **Section 1.2(m)(i)** applies to the foregoing proviso;

“Maritime Link” or **“ML”** means the transmission facilities to be constructed between the Island Interconnected System and the Nova Scotia Transmission System in accordance with the Maritime Link-Joint Development Agreement;

“Maritime Link (Emera) Transmission Service Agreement” or **“MLETSA”** means the agreement dated July 31, 2012 between Emera and an Affiliate of Emera relating to Transmission Rights of an Affiliate of Emera on the ML in respect of the Nova Scotia Block;

“Maritime Link-Joint Development Agreement” or **“ML-JDA”** means the agreement dated July 31, 2012 between Nalcor and Emera relating to the development of the Maritime Link;

“Maritime Link (Nalcor) Transmission Service Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera relating to Transmission Rights of Nalcor on the ML other than in respect of the Nova Scotia Block;

“Maritime Link Transmission Service Agreements” means the Maritime Link (Emera) Transmission Service Agreement and the Maritime Link (Nalcor) Transmission Service Agreement;

“Market Price Equivalent Cost” means the highest posted average real-time Energy price for the applicable corresponding hours at nodes to which Nalcor has access, in control areas bordering on, and interconnecting with, the Hydro Quebec Transenergie (**“HQT”**) system that could have been obtained for Energy flowing from the HQT system into the neighbouring control area in the corresponding hours of the period during which Nalcor fails to deliver the Block B Undelivered Energy, less applicable transmission Tariff Charges that would have been incurred to deliver an equivalent quantity of Energy from the Muskrat Falls Plant to the applicable node during such hours;

“Market Price Equivalent Energy” means an amount of Energy that Nalcor is obliged to deliver to Emera pursuant to **Section 8.4(a)(i)** calculated by multiplying the Block B Undelivered Energy by the Market Price Equivalent Cost and dividing the result by the Estimated Average Market MWh Cost;

“Marketing Personnel” means a natural Person who, individually or on behalf of any other Person, sells or purchases for consumption or resale Capacity, Energy, Energy derivatives and ancillary services in the wholesale power markets, and includes any natural Person who conducts such transactions on behalf of transmission service customers, power exchanges, transmission owners that are not also a System Operator, load serving entities, loads, holders of Energy derivatives, generators and other power suppliers and their designated agents;

“Muskrat Falls Plant” or **“MFP”** means a hydro-electric generation plant on the Churchill River in the vicinity of Muskrat Falls, NL, to be constructed by an Affiliate of Nalcor;

“NB” means the Province of New Brunswick;

“NB-Maine Border” means the point of interconnection in Canada closest to the border between NB and Maine where the NB Transmission System connects to the bulk energy transmission system of Maine Electric Power Company, Inc. or its successor;

“NB Transmission System” means the bulk energy transmission system in NB;

“NERC” means the North American Electric Reliability Corporation or its successor organization;

“NL” means the Province of Newfoundland and Labrador;

“NL Crown” means Her Majesty the Queen in Right of NL;

“NL Load Forecast” means Nalcor’s forecast, acting reasonably, of the amount of Energy and Capacity that it will require from the Muskrat Falls Plant during a Subsequent Term to supply its NL Native Load;

“NL Native Load” means the cumulative electricity consumption of NLH’s NL-based customers plus associated transmission and distribution losses;

“NL Taxes” means Taxes imposed by an Authorized Authority under the Applicable Law of NL, except income Taxes and, for greater certainty, does not include HST and all other federal or international Taxes;

“NLH” means Newfoundland and Labrador Hydro, a wholly-owned subsidiary of Nalcor, and its successors;

“NPCC” means the Northeast Power Coordinating Council or its successor organization;

“NS” means the Province of Nova Scotia;

“NS-NB Border” means a point located at the border of NS and NB where the 345 kV transmission line identified by NSPI as L8001 and a 138 kV transmission line identified by NSPI as L6513 cross between NS and NB;

“NS OATT” means the NSPI Open Access Transmission Tariff approved by the UARB as it may be amended, restated, reissued or replaced from time to time;

“NS Taxes” means Taxes imposed by an Authorized Authority under the Applicable Law of NS, except income Taxes and, for greater certainty, does not include HST and all other federal or international Taxes;

“NS Transmission System” means the bulk energy transmission system in NS;

“NS Transmission Utilization Agreement” means the agreement dated July 31, 2012 between Emera and Nalcor relating to the provision of Transmission Rights through NS by Emera to Nalcor;

“NSPI” means Nova Scotia Power Inc., a company incorporated under the laws of NS, and its successors;

“NSTUA Losses Adjustment” has the meaning set forth in Schedule 3 to the NS Transmission Utilization Agreement;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“Nalcor Affiliate Assignee” means an Affiliate of Nalcor to which all or any portion of the Nalcor Rights have been assigned in accordance with **Section 11.1**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

“Nalcor Commercial Operation Date” means the date following:

- (a) as regards the LIL and LTA, the date of “Commissioning” as defined in the NLDA; and
- (b) as regards the MFP, the MFP Commissioning Date;

“Nalcor Default” has the meaning set forth in **Section 8.1**;

“Nalcor Group” has the meaning set forth in **Section 13.2**;

“Nalcor Rights” has the meaning set forth in **Section 11.1(a)**;

“New Brunswick Transmission Utilization Agreement” means the agreement dated July 31, 2012 between Nalcor and Emera providing for the use by Nalcor of Transmission Rights in NB;

“New Taxes” means:

- (a) any Tax exigible pursuant to Applicable Law which comes into force after the Effective Date; and

- (b) any change to a Tax exigible pursuant to Applicable Law which comes into force after the Effective Date;

“Newfoundland and Labrador Development Agreement” or **“NLDA”** means the agreement dated July 31, 2012 among Nalcor, Emera and other parties relating, among other things, to the development of the MFP, the LIL and the LTA;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 17.1**;

“Nova Scotia Block” means:

- (a) the Energy entitlement of Emera from the Muskrat Falls Plant to be taken on a calendar year basis (and pro-rated during the first and last calendar years of the Initial Term if necessary to reflect the date on which First Commercial Power occurs), to be 0.986 TWh of Energy annually; and

- (b) Supplemental Energy,

both quantities referred to in paragraphs **(a)** and **(b)** are less Emera’s proportionate share of Transmission Losses; and

- (c) a monthly addition or subtraction of the ECA Loss Adjustment and the NSTUA Losses Adjustment, as applicable; and
- (d) the Associated Capacity entitlement of Emera which is provided to enable delivery of Energy referred to in paragraphs **(a)** and **(b)** during the hours specified in this Agreement;

“Nova Scotia Block Delivery Schedule” means the schedule for the delivery of the Nova Scotia Block by Nalcor to Emera as determined from time to time pursuant to **Schedule 5**;

“Off-Peak Hours” means the time from but excluding 2300 APT on one day to and including 0700 APT on the immediately following day;

“Original ECA” has the meaning set forth in the preamble to this Agreement;

“Parties” means the parties to this Agreement and **“Party”** means one of them;

“Payee” has the meaning set forth in **Section 9.1**;

“Payor” has the meaning set forth in **Section 9.1**;

“Peak Hours” means the time from but excluding 0700 APT to and including 2300 APT on the same day;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Planned Maintenance Period” means a period of planned total or partial outage which has been submitted to the applicable System Operator for scheduling, that is necessary for the inspection, testing, repair, maintenance or overhaul of, or modifications of, a component of the Transmission System, the NS Transmission System or the Muskrat Falls Plant, which in and of itself will result in an interruption or curtailment of the delivery of the Nova Scotia Block;

“Pre-FCP Surplus Energy” has the meaning set forth in **Section 4.1(b)(ii)**;

“Pricing Node” has the meaning set forth in **Section 4.1(b)(ii)(A)**;

“Prime Rate” means the variable rate of interest per annum expressed on the basis of a year of 365 or 366 days, as the case may be, established from time to time by The Bank of Nova Scotia, or any successor thereto, as its reference rate for the determination of interest rates that it will charge on commercial loans in Canadian dollars made in Canada;

“Project NDA” means the Restricted Use and Non-Disclosure Agreement dated June 20, 2011 between Nalcor and Emera;

“Recipient Party” has the meaning set forth in **Section 12.2(a)**;

“Redevelopment” means one or more programs or activities undertaken to replace major components, resulting in a restarted Service Life of the ML and for greater clarity, excludes normal maintenance activities or activities related to sustaining capital reinvestment to ensure full operation of the ML during its Service Life;

“Reference Day-Ahead Price” means the Day-Ahead Price (as that term is defined in the ISO-NE Tariff) in respect of the Pricing Node;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL, when referring to the Regular Business Hours of Nalcor, and 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS, when referring to the Regular Business Hours of Emera;

“Regulation Service” means the process whereby one balancing authority contracts to provide corrective response to all or a portion of the area control error of another balancing authority;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Reliability Coordinator” has the meaning set forth in **Schedule 5**;

“Renewable Electricity Standards” or **“RES”** means the Renewable Electricity Regulations issued under the *Electricity Act* (Nova Scotia) that establish renewable energy requirements for NS;

“Repairs” means repairs, changes, renewals, improvements or replacements;

“Representatives” means the directors, officers, employees, agents, lawyers, engineers, accountants, consultants and financial advisers of a Party and Affiliates of a Party;

“Retained Nova Scotia Block” has the meaning set forth in **Section 8.10(a)**;

“Safety Event” means an event which causes Nalcor to suspend delivery or Emera to suspend acceptance of the Nova Scotia Block for the purpose of safeguarding life or property by making Repairs to their facilities in accordance with Good Utility Practice;

“Sanction” has the meaning set forth in the ML-JDA;

“Sanction Agreement” means the agreement dated December 17, 2012 between Nalcor and Emera;

“Schedule”, when used as a verb, means to take all acts necessary to schedule, or cause to be scheduled, the delivery of Energy comprising the Nova Scotia Block to the Delivery Point in accordance with this Agreement;

“Service Life” means the period of time immediately following ML Commissioning during which the Maritime Link can continue to transmit Energy and Capacity at required reliability levels, and for greater clarity, a new Service Life will be established upon any Redevelopment of the Maritime Link;

“Specified Dispute” has the meaning set forth in the Dispute Resolution Procedure;

“Stored Energy” means the potential to generate Energy that is represented by an incremental increase in the volume of water stored in any reservoirs owned or operated by, or available to Nalcor, including the reservoir associated with the hydroelectric generation facilities at Churchill Falls on the Churchill River in NL;

“Subsequent Term” means a term, if any, commencing on the expiry of the Initial Term, or on the expiry of an immediately preceding Subsequent Term, as the case may be, and continuing for an agreed upon period of time not to exceed in aggregate the then remaining Service Life of the Maritime Link;

“Supplemental Energy” means the supplemental amount of Energy, if any, to be determined by Nalcor in accordance with **Schedule 4** that will be Scheduled and delivered by Nalcor to Emera at the Delivery Point (and for greater certainty is an amount net of Transmission Losses) for the five-year period commencing at First Commercial Power;

“Supporting Material” has the meaning set forth in **Section 9.1**;

“System Operator” means, as applicable, the NSPI system operator, a functionally separate division of NSPI responsible for the safe and reliable operation of the electricity system in NS, or any successor performing this role, in respect of NS, and the system operations department of NLH responsible for the safe and reliable operation of the electricity system in NL, or a functionally separate division of NLH, or any successor performing this role, as applicable, in respect of NL;

“TWh” means terawatt hours;

“Tariff Charges” means any charges arising pursuant to a tariff or other schedule of fees in respect of electricity transmission services;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Term” has the meaning set forth in **Section 6.1**;

“Term Extension Notice” has the meaning set forth in **Section 2.7(b)**;

“Term Sheet” has the meaning set forth in the preamble to this Agreement;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

“Third Party Claim” means a Claim referred to in **Section 13.1** or **13.2**;

“Transmission Losses” means the total of the Energy losses on the Transmission System as determined in accordance with **Schedule 3**, to be shared by the Parties on the basis set out in **Schedule 3**;

“Transmission Rights” means contractual rights to receive transmission service on specifically identified transmission infrastructure and transmission congestion rights;

“Transmission System” means the Labrador Transmission Assets, the Labrador-Island Link, the Island Interconnected System and the Maritime Link;

“UARB” means the Utility and Review Board body established by NS pursuant to the *Utility and Review Board Act* (Nova Scotia);

“US GAAP” means generally accepted accounting principles as defined by the Financial Accounting Standards Board or its successors, as amended from time to time;

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency; and

“Winter Period” means the period from and including November 1 of a year to and including March 31 of the immediately following year.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with US GAAP except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, Emera shall use commercially reasonable efforts to provide Nalcor with all of the information it needs to prepare Nalcor’s accounting records in accordance with Canadian GAAP.

- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada or in the NS OATT as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced therein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be “approved”, “decided” or “determined” by a Party, or requires a Party’s or its Representative’s “consent”, then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party’s own interests, in its sole and absolute discretion.

(m) Subsequent Agreements - Wherever a provision of this Agreement states that:

- (i) **Section 1.2(m)(i)** applies, in respect of the matters referred to in that provision:
 - (A) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing;
 - (B) any failure, inability or refusal of either Party or both Parties to reach agreement shall constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure;
 - (C) such Dispute shall be resolved as a Specified Dispute if so specified in such provision; and
 - (D) if such Dispute is not a Specified Dispute, the Parties will be deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve the Dispute by arbitration; or
- (ii) **Section 1.2(m)(ii)** applies, in respect of the matters referred to in that provision:
 - (A) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing; and
 - (B) the failure, inability or refusal of either Party or both Parties to reach agreement for any reason whatsoever will not constitute a Dispute and such matters are not subject to resolution pursuant to the Dispute Resolution Procedure.

1.3 Conflicts between Parts of Agreement

If there is any conflict or inconsistency between a provision of the body of this Agreement and that of a Schedule or any document delivered pursuant to this Agreement, the provision of the body of this Agreement shall prevail.

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 12**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to

the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Electricity Source

- (a) The Parties acknowledge that:
 - (i) the Energy of the Nova Scotia Block and associated GHG Credits are required by Emera to allow it to comply with Applicable Law relating to environmental compliance; and
 - (ii) subject to **Section 1.5(b)**, it is the intention of the Parties that the Nova Scotia Block be generated at the Muskrat Falls Plant.
- (b) Notwithstanding any other provisions of this Agreement, and in accordance with Good Utility Practice, there may be times when Nova Scotia Block Energy attributed to the Muskrat Falls Plant shall include Energy generated from Stored Energy. Provided that over the course of any calendar year the Muskrat Falls Plant has in fact generated an amount of Energy equal to or greater than the amount delivered to Emera during that year pursuant to this Agreement, all such amounts delivered to Emera shall be deemed to have been generated from the Muskrat Falls Plant.

1.6 Inter-Relationship with Original ECA

Effective as of the A&R Effective Date, this Agreement amends and restates the Original ECA in its entirety, it being understood and agreed that all liabilities and obligations under the Original ECA existing or arising with respect to occurrences prior to the A&R Effective Date will survive and continue to exist, and neither of the Parties is waiving any of its rights or remedies in respect thereof; provided however that obligations defined with reference to Sanction in the Original ECA will be deemed to exist or arise only as provided in this Agreement.

1.7 Schedules and Exhibits

The following are the Schedules attached to and incorporated by reference in this Agreement, which are deemed to be part hereof:

Schedule 1	-	Formal Agreements
Schedule 2	-	[Intentionally deleted]
Schedule 3	-	Calculation of Transmission Losses
Schedule 4	-	Calculation of Supplemental Energy
Schedule 5	-	Nova Scotia Block Energy Management
Schedule 6	-	Dispute Resolution Procedure
Schedule 7	-	Form of Assignment Agreement

ARTICLE 2 PURCHASE AND SALE OF ENERGY

2.1 Purchase and Sale of Energy During Initial Term

Nalcor hereby sells and agrees to deliver or cause to be delivered to Emera, and Emera hereby purchases and agrees to receive from Nalcor, the Nova Scotia Block at the Delivery Point during the Initial Term in accordance with this Agreement and the Nova Scotia Block Delivery Schedule.

2.2 Title, Ownership Risk and Responsibility

- (a) Title and ownership relating to the Energy sold by Nalcor to Emera hereunder will pass from Nalcor to Emera at the Delivery Point.
- (b) Nalcor shall indemnify Emera pursuant to **Article 13** for any Third Party Claim, and any Claim of any kind by the NL System Operator, caused by the generation, sale and delivery, or the failure to effect the generation or delivery, of the Energy sold hereunder to the point of interconnection of the Maritime Link and the Island Interconnected System. Emera shall indemnify Nalcor pursuant to **Article 13** for any Third Party Claim, and any Claim of any kind by the NS System Operator, caused by the purchase and receipt by Emera, or the failure to effect receipt, of Energy purchased hereunder and the transmission or failure to effect transmission of such Energy at and from the point of interconnection of the Maritime Link and the Island Interconnected System.

2.3 GHG Emissions and Credits

The Parties acknowledge and agree that:

- (a) the Nova Scotia Block is intended to enable Emera to satisfy obligations arising pursuant to the RES and/or legislation regarding greenhouse gas emissions. For the purposes of RES and greenhouse gas compliance, Emera will own the GHG Credits related to the Nova Scotia Block. Emera shall not sell these GHG Credits. Other than the GHG Credits associated with the Nova Scotia Block, all other credits associated with greenhouse gas emissions will be owned by Nalcor or an Affiliate of Nalcor;
- (b) to give effect to **Section 2.3(a)**, Nalcor hereby assigns, unconditionally and absolutely, all of its right, title and interest in and to all of the GHG Credits attributable to the Energy comprising the Nova Scotia Block free and clear of any Encumbrances. Any such assignment shall be effective from time to time as and when such GHG Credits have been created and the associated Energy is delivered to Emera; and
- (c) if any Authorized Authority adopts one or more programs with respect to the certification or regulation of energy projects based on greenhouse gas emissions or other environmental standards, then at the request of Emera acting reasonably,

Nalcor shall make commercially reasonable efforts to apply for and/or register the Muskrat Falls Plant under such certification or regulation, provided Emera shall reimburse Nalcor on a pro rata basis (based upon Emera's proportionate entitlement to the Energy generated by the Muskrat Falls Plant at the time of incurring such expenses) for all expenses incurred by Nalcor in connection with any such application, certification or regulation.

2.4 Safety

Nalcor shall have the right to suspend the delivery, and Emera shall have the right to suspend the acceptance, of the Nova Scotia Block without breaching this Agreement or incurring liability to each other during a Safety Event, but all such suspensions shall be of a minimum duration as required given the circumstances, and when possible and when consistent with Good Utility Practice, be arranged for a time least objectionable to the Parties, acting reasonably. In the case of such suspension the portion of the Nova Scotia Block not delivered during such suspension shall be delivered in accordance with **Schedule 5**.

2.5 Planned Maintenance Periods

All Planned Maintenance Periods shall be of a minimum duration as required given the circumstances, and when possible and when consistent with Good Utility Practice, be arranged by the Party requiring the Planned Maintenance Period for a time least objectionable to the Parties, acting reasonably.

2.6 [Intentionally deleted]

2.7 Subsequent Term(s)

- (a) No later than five years before the end of the Initial Term and eighteen months before the end of any Subsequent Term, the Parties shall complete a study to determine the remaining Service Life of the ML.
- (b) Promptly upon completion of each such study, Emera shall Notify Nalcor (such Notice, a "**Term Extension Notice**") whether or not it wishes to negotiate the purchase and sale of an annual amount of Energy of up to the Nova Scotia Block (which amount shall be the amount determined for the Initial Term of this Agreement and exclude any amount attributable to Supplemental Energy and any additional Energy delivered pursuant to **Section 8.4**) for each year of a Subsequent Term and, in the Term Extension Notice, shall specify the proposed amount of Energy and duration of the Subsequent Term. Upon receipt of the Term Extension Notice Nalcor shall, within 180 days, Notify Emera whether or not it requires all of the Energy comprising the aforementioned annual portion of the Nova Scotia Block, to meet its NL Load Forecast requirements during the immediately following proposed Subsequent Term and shall provide Emera with a true copy of the NL Load Forecast. If Nalcor Notifies Emera that it does not require all of such Energy during the immediately following proposed Subsequent Term to meet the NL Load Forecast, then the Parties shall negotiate with respect to the terms and conditions (including

price) upon which Nalcor would continue to sell, Schedule and deliver and Emera would continue to purchase and receive Energy during such proposed Subsequent Term. **Section 1.2(m)(ii)** applies to this **Section 2.7(b)**. For greater certainty, none of the terms and conditions set forth in this Agreement will apply to the purchase and sale of Energy in any Subsequent Term, unless expressly so incorporated in any agreement therefor.

- (c) If the Parties do not agree upon the terms and conditions (including price) for the purchase and sale of Energy during the proposed Subsequent Term, as contemplated in this Section, then, as of the expiry of the Initial Term or the then-current Subsequent Term, as the case may be, Nalcor may sell the Energy that formed the subject of such good faith negotiations to third parties.

ARTICLE 3 TAXES

3.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 3.1(c)** and the provisions of this Agreement dealing with Government Action:
- (i) Nalcor shall pay or cause to be paid all Taxes on or with respect to the Nova Scotia Block or GHG Credits arising prior to the Energy reaching the Delivery Point;
 - (ii) Emera shall pay or cause to be paid all Taxes on or with respect to the Nova Scotia Block or GHG Credits at and from the Delivery Point;
 - (iii) notwithstanding **Section 3.1(b)(i)**, Emera shall pay or cause to be paid all NS Taxes on or with respect to the Nova Scotia Block or GHG Credits;
 - (iv) notwithstanding **Section 3.1(b)(ii)**, Nalcor shall pay or cause to be paid all NL Taxes on or with respect to the Nova Scotia Block or GHG Credits;
 - (v) if Nalcor is required by Applicable Law to remit or pay Taxes which are Emera's responsibility hereunder, Nalcor shall first offset the amount of Taxes so recoverable from other amounts owing by it to Emera under this Agreement, and Emera shall promptly reimburse Nalcor for such Taxes to the extent not so offset;
 - (vi) if Emera is required by Applicable Law to remit or pay Taxes which are Nalcor's responsibility hereunder, Emera shall first offset the amount of Taxes so recoverable from other amounts owing by it to Nalcor under this

Agreement, and Nalcor shall promptly reimburse Emera for such Taxes to the extent not so offset; and

- (vii) nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.
- (c) HST - Notwithstanding **Sections 3.1(a)** and **(b)**, the Parties acknowledge and agree that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to the other Party, such amount shall first be increased by the percentage determined for “B” in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
 - (iii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other Party such documentation required pursuant to **Section 3.3**; and
 - (iv) if one Party incurs an expense as agent for the other Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 3.1(b)** and **(c)** and provisions of this Agreement dealing with Government Action, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
 - (i) Emera and its Affiliates are solely responsible for the payment of income taxes and HST payable by Emera and its Affiliates, as the case may be; and
 - (ii) Nalcor and its Affiliates are solely responsible for the payment of income taxes and HST payable by Nalcor and its Affiliates, as the case may be.

3.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 3.2(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

3.3 Invoicing

All invoices, as applicable, issued pursuant to **Article 9** shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

3.4 Payment and Offset

- (a) Subject to **Section 3.4(b)**, Taxes collectable by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

3.5 HST Registration Status and Residency

- (a) Nalcor represents and warrants that it is registered for purposes of the HST and that its registration number is 837364611, and undertakes to advise Emera of any change in its HST registration status or number.

- (b) Emera represents and warrants that it is registered for purposes of the HST and that its registration number is 868143132, and undertakes to advise Nalcor of any change in its HST registration status or number.
- (c) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Emera of any change in its residency status.
- (d) Emera represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Nalcor of any change in its residency status.

3.6 Cooperation to Minimize Taxes

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Law, so long as neither Party is materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Law in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).

3.7 Additional Tax Disclosure

Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide to the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:

- (a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
- (b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and
- (c) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

In addition to the notification required under this Section, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in paragraphs (a) through (c).

3.8 Prohibited Tax Disclosure

Except as required by Applicable Law, notwithstanding any other provision of this Agreement, each Party shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of the other Party to an Authorized Authority without the prior written consent of such other Party.

3.9 Withholding Tax

If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Law, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, the Party shall deliver to the other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of the other Party.

3.10 Tax Indemnity

Each Party (in this Section referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 3** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 3.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

- (a) any and all Taxes imposed by any Authorized Authority on the other Party in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein; and
- (b) any and all Taxes imposed by any Authorized Authority in respect of the supplies contemplated by this Agreement, and any and all Claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein.

3.11 Additional Tax Indemnity

If one Party (in this Section referred to as the “**First Party**”) is, at any time, a non-resident of Canada for the purposes of the Income Tax Act or the Applicable Law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this Section referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:

- (a) any such amount payable by the other Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
- (b) for greater certainty, this Section shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

3.12 Assignment – Tax Requirements

Notwithstanding any other provision in this Agreement, except as otherwise agreed to by the Parties in writing, a Party shall not assign any of its interest in this Agreement to another Person unless:

- (a) the Person is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such Assignment;
- (b) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Article 3**.

ARTICLE 4

MUSKRAT FALLS PLANT AND LABRADOR-ISLAND LINK

4.1 Construction of Muskrat Falls Plant and Labrador-Island Link

- (a) Construction Standards - Nalcor shall ensure that the Muskrat Falls Plant, the necessary upgrades to the Island Interconnected System and the Labrador-Island Link are designed, engineered, constructed and sufficiently completed and commissioned using Good Utility Practice and in compliance with Applicable Law so as to be capable of delivering the Nova Scotia Block.

- (b) Energy Before First Commercial Power - Prior to First Commercial Power, if the MFP is producing Energy and, if available, Capacity (in this Section, “**MFP Preliminary Energy**”) and the LIL and LTA are commissioned within the meaning of “Commissioning” as set forth in the NLDA, then the following provisions shall apply:
- (i) before the ML Commercial Operation Date, Nalcor may use, sell or otherwise dispose of, store or otherwise deal with any MFP Preliminary Energy in whatever manner it may determine, and Nalcor shall have no obligation to Emera in respect of any Energy produced or capable of being produced from the MFP;
 - (ii) after the ML Commercial Operation Date, Nalcor may deliver MFP Preliminary Energy to NLH to satisfy the NL Native Load and may produce Energy from the MFP to produce Stored Energy, but shall not sell or otherwise dispose of any other MFP Preliminary Energy (such other Energy and, if available, Capacity being referred to as “**Pre-FCP Surplus Energy**”) in any manner unless it has first complied with the following provisions:
 - (A) Emera shall have the option to purchase from Nalcor at the Delivery Point Pre-FCP Surplus Energy after adjustment for Transmission Losses at a purchase price equal to the Reference Day-Ahead Price for the applicable hours at the ISO-NE Salisbury node (described as NB-NE External Node .I.SALBRYNB345 in the ISO-NE Market Operations Manual) or any replacement or comparable node designated by the ISO-NE (the “**Pricing Node**”), less all Tariff Charges (including tariff charges in respect of applicable ancillary services) that would have been payable by Nalcor pursuant to: (1) the NS Transmission Utilization Agreement had such Pre-FCP Surplus Energy been transmitted from the Delivery Point to the NS-NB Border pursuant to that agreement; (2) pursuant to the New Brunswick Transmission Rights Utilization Agreement had such Pre-FCP Surplus Energy been transmitted from the NS-NB Border to the NB-Maine Border pursuant to that agreement; and (3) pursuant to the ISO-NE Tariff, had such Pre-FCP Surplus Energy been transmitted from the NB-Maine Border to the Pricing Node. If the Pricing Node ceases to exist or otherwise not serve as a valid reference point for determining a Reference Day-Ahead Price at the NB-Maine Border, the Parties agree to negotiate to determine the price, failing which such matter shall be a Specified Dispute. **Section 1.2(m)(i)** applies to the foregoing sentence;
 - (B) the procedure for the exercise of Emera’s option to acquire Pre-FCP Surplus Energy during a weekly period commencing at 2400 APT on a Saturday and ending 168 hours (or 167 or 169 hours, as may be required to accommodate a change to or from daylight savings time) later (each a “**Delivery Week**”) is as follows:

- (1) by no later than 1000 APT on the Thursday before the start of a Delivery Week, Nalcor shall give notice (a "**Forecast Notice**") to Emera of the maximum amounts of Pre-FCP Surplus Energy and the times which it forecasts such Energy will be available during such Delivery Week. If Nalcor has not delivered a Forecast Notice by such time, there shall be deemed to be no amount of Pre-FCP Surplus Energy available during that Delivery Week;
 - (2) after receipt of a Forecast Notice, by no later than 1600 APT on the Thursday before the start of the Delivery Week, Emera will notify Nalcor if it will exercise its option and, if it does, as to the amounts of the forecast Pre-FCP Surplus Energy it will take and the times during the forecast times when it will accept delivery;
 - (3) on or before 0700 APT of the day before each day in such Delivery Week during which Nalcor anticipates delivering Pre-FCP Surplus Energy in accordance with (1) and (2) (each, a "**Delivery Day**"), Nalcor shall confirm by notice (each a "**Confirmation Notice**") to Emera the amounts of Pre-FCP Surplus Energy and times when it will make such Energy available to Emera;
 - (4) on or before 1015 APT of the day before a Delivery Day, Emera shall confirm by notice to Nalcor whether it will accept delivery at the Delivery Point of the Pre-FCP Surplus Energy at the times specified in the Confirmation Notice;
 - (5) subject to the terms and conditions of this Agreement with any necessary changes being made, Nalcor shall deliver the Pre-FCP Surplus Energy to Emera (as confirmed under subsection (4)) at the Delivery Point at the times specified; and
 - (6) failure by Emera to respond to any notice within the time specified will constitute a non-exercise of its option with respect to such amount of Pre-FCP Surplus Energy; and
- (C) Nalcor may use, sell or otherwise dispose of, store or otherwise deal with any Pre-FCP Surplus Energy in respect of which Emera has not exercised its option in accordance with **Section 4.1(b)(ii)(A)**, in whatever manner Nalcor may determine.
- (c) Commencement of Delivery of the Nova Scotia Block - Subject to the occurrence of the ML Commercial Operation Date and the Nalcor Commercial Operation Date, Nalcor shall commence delivery of the Nova Scotia Block upon the MFP generating

sufficient Energy and Capacity to service NL Native Load and the Nova Scotia Block and not later than the MFP Commissioning Date. Nalcor shall give Emera Notice of the commencement of the delivery of the Nova Scotia Block not less than 30 days before such commencement.

- (d) Generation and Transmission Obligation - During the Initial Term and subject to the terms of this Agreement, Nalcor shall:
 - (i) cause the Muskrat Falls Plant to generate Energy sufficient to satisfy its obligations to deliver the Nova Scotia Block to Emera pursuant to this Agreement;
 - (ii) cause the Labrador-Island Link, and the necessary upgrades to the Island Interconnected System, to be operated and maintained so as to have sufficient transmission capacity to reliably transmit the Nova Scotia Block in accordance with Good Utility Practice; and
 - (iii) integrate into the NS Transmission System to conform with all reliability and system control parameters.
- (e) Information - Each Party shall provide to the other Party the information with respect to the MFP, the LIL and the ML as set forth in Article 4 of the NLDA.

4.2 Operation and Maintenance, Records

- (a) Operation Standards - Throughout the Term, Nalcor shall operate, maintain and rehabilitate (or cause to be operated, maintained and rehabilitated) the MFP using Good Utility Practice and in compliance with all Applicable Law. Nalcor shall take measures in accordance with Good Utility Practice to protect the MFP from any damage caused by electrical faults or disturbances on the Transmission System.
- (b) Record Keeping - Each Party shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Term, including major maintenance records, life cycle management records, hydrology records and design and commissioning records, shall be retained for the Term; all other documents shall be retained for at least seven years. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate operating records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Party to comply with its obligations to Authorized Authorities, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees or auditor are bound by the confidentiality requirements provided for in the Project NDA. In no circumstances shall either Party

permit Marketing Personnel to have access to any of the other Party's information referred to in this paragraph without the prior written consent of the affected Party, unless such material is publicly available. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

- (c) Access - Emera shall have the right, from the Effective Date through to the end of the Term, upon reasonable advance Notice to Nalcor, to access the Muskrat Falls Plant and the site thereof at all reasonable times for the sole purpose of examining the Muskrat Falls Plant or the construction thereof in connection with the performance of the respective obligations of the Parties under this Agreement, such reasonable advance Notice to set out the purpose of its intended access and the areas it intends to examine. Such access shall not unreasonably interfere with the activities at the Muskrat Falls Plant and shall not compromise the safety of persons or property. While accessing the Muskrat Falls Plant, all Representatives of Emera shall follow all rules and procedures established by Nalcor for visitors to the site which are related, but not limited, to safety and security. The inspection of the Muskrat Falls Plant or the exercise of any audit rights or the failure to inspect the Muskrat Falls Plant or to exercise audit rights by or on behalf of Emera shall not relieve Nalcor of any of its obligations under this Agreement. No Nalcor Default will be waived or deemed to have been waived solely by any inspection by or on behalf of Emera. In no event will any inspection by Emera hereunder be a representation that there has been or will be compliance with this Agreement and Applicable Law. In no circumstances shall Emera permit its Marketing Personnel to have access to the Muskrat Falls Plant or any information received as a result of such access referred to in this paragraph without the prior written consent of Nalcor, unless such material is publicly available. This **Section 4.2(c)** does not apply to give Emera direct access and audit rights with respect to non-Affiliated contractors and subcontractors of Nalcor unless specifically agreed to in the applicable project contract.

ARTICLE 5 INSURANCE

5.1 Insurance Program

Nalcor shall, as it deems necessary, acting reasonably, place or cause to be placed for the duration of this Agreement operational property and liability insurances as are normally necessary for a facility of similar size and design to the MFP, including All Risk Property Insurance and Comprehensive Boiler and Machinery Breakdown Insurance, Third Party Liability Insurance, as well as, such other coverages as may be deemed appropriate in the opinion of Nalcor, acting reasonably, giving due consideration to the inherent risks of the MFP and the factors mentioned in **Section 5.2**.

5.2 Coverages, Limits, Deductibles and Exclusions

In each case, the insurance shall provide for coverages, limits, deductibles, exclusions and other terms and conditions as may be appropriate for the MFP, giving due consideration to:

- (a) the values at risk and the maximum loss exposures reasonably anticipated at the time the insurance coverage is placed;
- (b) exposures to third party liabilities;
- (c) commercial availability and commercially reasonable cost of such insurance;
- (d) the reasonable practices employed by similar entities and similar projects in Canada; and
- (e) Nalcor's financial ability and desire to retain or self-insure certain risks.

5.3 Provisions to be Included in Insurance Policies

All insurance procured by Nalcor pursuant to this **Article 5** shall:

- (a) name Emera, its affiliates as appropriate, and their respective directors, officers and employees as additional insureds with respect to the third party liability insurance policy referred to in this **Article 5**;
- (b) be at Nalcor's expense and will be primary, non-contributing with, and not excess of, any other insurance available to Emera;
- (c) provide for 30 days' prior notice to Emera in the event of cancellation or material change that reduces or restricts the Insurance provided that if insurers shall provide notice earlier than 30 days, Nalcor shall immediately advise Emera of same;
- (d) remain in full force and effect at all times during the Term of this Agreement; and
- (e) include a waiver of subrogation in favour of Emera, its affiliates as appropriate, and their respective directors, officers and employees.

5.4 Lender Requirements

Emera shall cooperate fully with Nalcor and shall assist Nalcor in complying with obligations imposed by lenders relating to the insurance coverage provided pursuant to this **Article 5**.

5.5 Evidence of Insurance

If requested by Emera, Nalcor shall provide satisfactory evidence of insurance pursuant to this **Article 5** in the form of a certificate of insurance when obtained and thereafter annually upon renewal of such insurance.

5.6 Placement of Required Insurance

If Nalcor fails to obtain or maintain any insurance required to be maintained by it hereunder, Emera may place insurance on its behalf and all costs thereof or in relation thereto shall be for the sole account of Nalcor.

5.7 Effect of Failure to Insure

Notwithstanding **Section 5.6**, none of the obligations of Nalcor in this Agreement shall be reduced, or in any way affected, or diminished in any respect, by a failure of Nalcor to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by a denial of coverage of any insurance, nor shall Nalcor be entitled to any indemnity or contribution as a result of any such failure to obtain insurance or to obtain adequate insurance coverage, either as agreed in this Agreement or otherwise or at all, or by any denial of coverage of any insurance.

5.8 Site Visits

Emera shall provide to Nalcor evidence of liability insurance and automobile liability insurance in anticipation of any visits to any Nalcor facility including the MFP.

5.9 Corporate Policies

It is understood and agreed that Nalcor may provide the coverage provided for in this Agreement through policies covering other assets and/or operations operated by Nalcor.

ARTICLE 6 TERM AND TERMINATION

6.1 Term

This Agreement became effective on the Effective Date and shall terminate in accordance with **Section 6.2** (the “**Term**”).

6.2 Termination of Agreement

This Agreement shall terminate on the earliest to occur of any of the following events:

- (a) [Intentionally deleted];
- (b) [Intentionally deleted];
- (c) expiration of the Initial Term;
- (d) written agreement of the Parties to terminate;
- (e) termination by Nalcor of the ML-JDA;

- (f) any termination pursuant to **Section 6.3**; and
- (g) any termination pursuant to **Section 8.6(d)**.

6.3 Extended Force Majeure

(a) Termination of Agreement - If:

- (i) a Party has given Notice under **Section 10.1** of a Force Majeure event which prevents Nalcor from delivering all of the remaining undelivered Nova Scotia Block;
- (ii) despite a Party complying with its obligations under **Section 10.1(a)(iii)**, there are no commercially reasonable means to rectify the consequences of such Force Majeure event within 36 months after the Force Majeure event commenced (the “**Extended Force Majeure Period**”); and
- (iii) unless the Parties otherwise agree in writing, the period of Force Majeure extends for a period greater than the Extended Force Majeure Period,

then, unless the Extended Force Majeure Period is extended pursuant to **Section 6.3(b)**, either Party may elect on 60 days’ Notice to the other Party to terminate this Agreement without liability to the other, except for the liabilities and obligations provided for in **Section 6.4**.

- (b) Extension of Time for Rectification - If the consequences of the Force Majeure event can be rectified, and a Party is diligently proceeding with such measures as are required to rectify the consequences of the Force Majeure event, the Extended Force Majeure Period shall be extended by such period as is required for the Party to complete such measures.

6.4 Effect of Termination

(a) Obligations on Termination - When this Agreement terminates:

- (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Article 16**); and
- (ii) neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 6.4**.

- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
- (i) the final settlement of all accounts between the Parties;
 - (ii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;
 - (iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement; and
 - (iv) any other obligations that survive pursuant to **Section 17.13**.

ARTICLE 7 PERMITS, LICENSES AND APPLICABLE LAW

7.1 Licences and Compliance with Law

- (a) The Parties shall each be responsible for obtaining and maintaining any licences and permits as may be required for their respective performance of this Agreement.
- (b) Each Party shall comply with any Applicable Law of any Authorized Authority with jurisdiction over the subject matter of this Agreement.

ARTICLE 8 DEFAULT AND REMEDIES

8.1 Nalcor Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a “**Nalcor Default**”):

- (a) Nalcor fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Emera that such amount is due and owing;
- (b) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 8.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera;
- (c) any representation or warranty made by Nalcor in this Agreement is false or misleading in any material respect;

- (d) Nalcor ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets;
- (e) any Insolvency Event occurs with respect to Nalcor; and
- (f) a Government Action occurs.

8.2 **Emera Remedies upon Nalcor Event of Default**

- (a) **General** - Upon the occurrence of a Nalcor Default and at any time thereafter, provided Emera is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated as being the sole and exclusive right, remedy or recourse:
 - (i) Emera shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Emera are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) **Losses** - Subject to **Article 14**, Emera may recover all Losses suffered by Emera that are due to a Nalcor Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Emera to recover any amounts owed to Emera by Nalcor under this Agreement. For greater certainty Emera's right to damages for a Government Action under this **Section 8.2(b)** are in addition (but without duplication) to any rights it may have under **Section 8.6(a)(ii)**.
- (c) **Dispute Resolution for Government Action** - If Nalcor contests whether a Government Action has occurred, the impact on Emera of such Government Action or the amount of the Losses being claimed by Emera, the remedies of Emera with respect to such Government Action shall be suspended until the matter has been determined in accordance with the Dispute Resolution Procedure. The Parties agree that NL and NS shall be given notice of and have the right to be parties to any arbitration or litigation of such Dispute pursuant to the Dispute Resolution Procedure.
- (d) **Adjustment for Compensation Paid by NL** - The Losses payable to Emera as a result of the occurrence of a Government Action shall be net of any compensation paid to Emera by NL as part of the Government Action or as a result of the Government Action. There is no obligation on Emera to exercise any rights it may have against NL under the Inter-Provincial Agreement, or otherwise, prior to exercising its rights

under this Agreement, or at all, in order for it to be entitled to exercise its rights against Nalcor under this Agreement.

- (e) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

8.3 Failure to Deliver or Accept - Forgivable Non Delivery

If Nalcor does not deliver to Emera, or Emera does not accept, all or any of the Nova Scotia Block at the Delivery Point at any time during the Initial Term or any extensions of the Initial Term provided pursuant to **Section 8.5** by reason of a Forgivable Event (such Energy being “**Block A Undelivered Energy**”) then Nalcor shall be obligated to deliver the Block A Undelivered Energy on the terms set out in **Section 8.5**.

8.4 Nalcor Failure to Deliver - Curable

- (a) Compensation for Failure to Deliver - If Emera is in material compliance with its obligations under this Agreement, the Maritime Link Transmission Service Agreements and the NS Transmission Utilization Agreement, and Nalcor fails to deliver any portion of the Nova Scotia Block at the Delivery Point at any time during the Initial Term other than the Block A Undelivered Energy (such Energy being “**Block B Undelivered Energy**”), then Nalcor shall compensate Emera as liquidated damages for the failure to deliver such Block B Undelivered Energy by delivering to Emera on the terms set out in **Section 8.5**, an amount of Energy calculated in accordance with one of the following alternatives selected by Emera in its absolute discretion (and notwithstanding how or whether Emera actually replaces the Block B Undelivered Energy):

- (i) 120% of the Market Price Equivalent Energy; or

- (ii) 120% of the Marginal Cost Energy,

which in either case shall not be less than the Block B Undelivered Energy (“**Compensation Energy**”).

- (b) GHG Credits - Regardless of which of the Energy quantity options is selected by Emera under **Section 8.4(a)**, Nalcor shall provide Emera with the quantities of GHG Credits that would have been provided had the Block B Undelivered Energy been delivered as Scheduled.
- (c) Monetization of Compensation Energy - If the Parties, acting reasonably, determine that the delivery of any Compensation Energy cannot be made within one year from the date it should have been delivered (and failing to determine within 14 days shall

be a Dispute), then at Emera's option and on 30 days' Notice, Emera may convert the Compensation Energy that cannot be so delivered into a monetary amount determined for Compensation Energy referred to in:

- (i) **Section 8.4(a)(i)**, by multiplying the Estimated Average Market MWh Cost (which shall be the same cost as had been applied to determine the amount of Compensation Energy) by the Compensation Energy that was not so delivered; or
- (ii) **Section 8.4(a)(ii)**, by multiplying the Estimated Average Marginal MWh Cost (which shall be the same cost as had been applied to determine the amount of Compensation Energy) by the Compensation Energy that was not so delivered,

and such amount shall immediately become due and payable by Nalcor to Emera.

- (d) Disputes - Any Dispute under **Section 8.4**, other than a Dispute as to whether an amount of Energy is Block B Undelivered Energy, shall be a Specified Dispute.
- (e) Full Satisfaction - Provided that Nalcor has provided to Emera all the Energy, GHG Credits and/or money as may be required under **(a)**, **(b)** and/or **(c)** in respect of a failure to deliver Block B Undelivered Energy, such remedies are Emera's sole and exclusive rights, remedies and recourses in respect of such failure, and Nalcor shall have no further obligations or liabilities in respect of such failure.

8.5 Scheduling Late Deliveries

- (a) Nalcor shall deliver to Emera any Block A Undelivered Energy and Compensation Energy it is required to deliver in accordance with the procedures, at the times and, in the manner set out in this Section and Section 5 of **Schedule 5**. If Nalcor has not delivered any Block A Undelivered Energy or Compensation Energy required to be delivered in accordance with this Section and Section 5 of **Schedule 5** to Emera prior to the expiry of the Initial Term then the Initial Term shall be extended for so long as is necessary for Nalcor to deliver to Emera the remaining Block A Undelivered Energy and Compensation Energy.
- (b) If the Initial Term is extended pursuant to **Section 8.5(a)**, Emera shall be liable to Nalcor for its pro rata share of the ML O&M Costs incurred by Nalcor during such extension based on the ratio of the actual transmission Capacity used by Emera for the delivery of the Block A Undelivered Energy and the Compensation Energy, to the total transmission Capacity of the ML.

8.6 Nalcor's Failure to Deliver – Not Curable

- (a) Compensation Event - If Nalcor does not comply with its obligations to deliver the Nova Scotia Block to Emera in accordance with this Agreement for all or the remainder of the Initial Term, as applicable:
- (i) for any reason, other than a Forgivable Event of any duration, which is not cured within 24 months after such non-delivery commenced, Emera shall have the option to continue to claim any damages due under **Section 8.4** in respect of a failure by Nalcor to deliver Block B Undelivered Energy as provided in **Section 8.4(a)** or to deem such non-delivery a Compensation Event to which this **Section 8.6** applies;
 - (ii) by reason of Government Action which prevents the delivery of all or substantially all of the Nova Scotia Block, Emera shall have the option to deem such default to be a Compensation Event to which this **Section 8.6** applies;
 - (iii) by reason of a breach by Nalcor of Section 11.4(g) of the NLDA, which breach shall constitute a Compensation Event to which this **Section 8.6** shall apply; or
 - (iv) all or a material portion of the MFP Development Activities are discontinued or cease for a single continuous period in excess of 120 days, unless contemplated by the project schedule or for seasonal interruptions that are customary in the usual and ordinary course of the MFP Development Activities or for Force Majeure (as "Force Majeure" is defined in the NLDA) or for the suspension of MFP Development Activities pursuant to Section 2.10 of the NLDA, which discontinuance or cessation shall constitute a Compensation Event to which this **Section 8.6** shall apply.

With respect to a Compensation Event, Emera, provided it is in material compliance with its obligations under this Agreement, the Maritime Link Transmission Service Agreements and the Nova Scotia Transmission Utilization Agreement may on 30 days' Notice require Nalcor, subject to **Section 8.2(d)** with respect to a Government Action, to compensate Emera by paying or delivering an amount equal to the aggregate of:

- (v) the Compensation Value as defined in **Section 8.6(b)** and as may be subject to **Section 8.6(c)**; plus
- (vi) without duplication, the reasonable out-of-pocket costs, expenses, fees, penalties or fines incurred by Emera as a direct result of such Compensation Event

(collectively, the "**Compensation Damages**").

- (b) Compensation Value - In this **Section 8.6**, “**Compensation Value**” means one of the following three options and Nalcor may select which option shall apply:
- (i) Nalcor shall provide Emera with an amount of Energy and Capacity equal to the portion of the entire amount of the Nova Scotia Block remaining to be delivered at the time of the Compensation Event (the “**Undelivered Nova Scotia Block**”), which Energy and Capacity has equivalent characteristics to the Nova Scotia Block (including firmness and RES or equivalent regulatory or greenhouse gas reduction characteristics). Nalcor shall be liable to deliver such Energy and Capacity in accordance with the Nova Scotia Block Delivery Schedule, with any necessary changes being made to such schedule; or
 - (ii) Nalcor shall provide Emera with an amount of Energy and Capacity equal to the entire amount of the Undelivered Nova Scotia Block, which Energy and Capacity does not have all of the equivalent characteristics to the Nova Scotia Block (including firmness and RES or equivalent regulatory or GHG reduction features). Nalcor shall be liable to deliver such Energy and Capacity in accordance with the Nova Scotia Block Delivery Schedule, with any necessary changes being made to such schedule, and Nalcor shall be liable to Emera in damages for a monetary amount equal to the net present value of those unprovided characteristics; or
 - (iii) if Nalcor does not elect to provide Emera with the entire amount of the Undelivered Nova Scotia Block pursuant to **Section 8.6(b)(i)** or **(ii)**, then Nalcor shall pay to Emera the Compensation Value in an amount equal to the net present value of the costs Emera would have to incur, consistent with the least cost option which is consistent with Good Utility Practice, to either:
 - (A) acquire from third parties and then deliver to the NS Transmission System; or
 - (B) take steps to generate or cause to be generated, and then transmit Energy and Capacity equal to the Undelivered Nova Scotia Block with equivalent characteristics (including firmness and RES or equivalent regulatory or GHG reduction features), less the net present value of the ML O&M Costs that would have been payable by Emera had the Nova Scotia Block been delivered under this Agreement. If the Energy and Capacity does not have equivalent characteristics to the Nova Scotia Block (including firmness and RES or equivalent regulatory or GHG reduction features), Nalcor shall be liable to Emera for damages in a monetary amount equal to the net present value of those unprovided characteristics.
- (c) Mitigation if Maritime Link not Complete - If Emera is entitled to compensation for a Compensation Event under **Section 8.6(a)(ii)**, **(iii)** or **(iv)**, Emera shall mitigate the Compensation Damages by taking commercially reasonable steps to minimize the Actual Capital Costs and applicable AFUDC of the Maritime Link incurred (as “Actual

Capital Costs” and “AFUDC” are defined in the ML-JDA), and if so minimized, the amount of the Undelivered Nova Scotia Block will be calculated by multiplying the Nova Scotia Block by the ratio of the Actual Capital Costs and applicable AFUDC actually incurred taking into account such mitigation to the then most current estimate of the Capital Costs (as “Capital Costs” is defined in the ML-JDA) and applicable AFUDC that would have been incurred by Emera had the Compensation Event not occurred. Any costs incurred by Emera in minimizing the Actual Capital Costs shall be included in the Actual Capital Costs, and related AFUDC.

- (d) Payment of Compensation Damages in Full - Payment or delivery of the Compensation Damages (or if Emera selects the option for a Government Action to claim damages under **Section 8.2** and not under **Section 8.6(a)(ii)**, and the damages paid or delivered by Nalcor or NL to Emera are equivalent to Compensation Damages) by Nalcor or NL to Emera will constitute full and final satisfaction of all amounts that may be claimed by Emera for and in respect of the occurrence of the Compensation Event and, upon such full payment or delivery, this Agreement shall terminate, Nalcor will be released and forever discharged by Emera from any and all liability arising in respect of this Agreement (including the Government Action if applicable) and Emera shall transfer the Maritime Link to Nalcor for \$1.00.
- (e) Remedy Options - Subject to **Section 8.7**, if either by election by Emera or by the operation of this **Section 8.6**, the remedies applicable to a Compensation Event under this **Section 8.6** apply, then such remedies shall be Emera’s sole and exclusive right, remedy or recourse with respect to that Compensation Event.

8.7 **Equitable Relief**

Nothing in this Article will limit or prevent Emera from seeking equitable relief including specific performance, or a declaration to enforce Nalcor’s obligations under this Agreement.

8.8 **Emera Events of Default**

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Emera under this Agreement (an “**Emera Default**”):

- (a) Emera fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Nalcor that such amount is due and owing;
- (b) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 8.8(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor, unless the cure reasonably requires a longer period and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor;

- (c) any representation or warranty made by Emera in this Agreement is false or misleading in any material respect;
- (d) Emera ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets;
- (e) any Insolvency Event occurs with respect to Emera;
- (f) Emera is in breach of **Section 12.1(g)** of the ML-JDA; and
- (g) Emera, or an Affiliate of Emera, as applicable, is in default of its obligations under either of the Maritime Link Transmission Service Agreements or the Nova Scotia Transmission Utilization Agreement and has not cured such default within the time periods provided for therein.

8.9 Nalcor Remedies upon Emera Event of Default

- (a) General - Upon the occurrence of an Emera Default and at any time thereafter, provided Nalcor is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:
 - (i) Nalcor shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourse available to Nalcor are cumulative and may be exercised separately or in combination.

The exercise of, or failure to exercise, any available right, remedy or recourse does not preclude the exercise of any other rights, remedies or recourse or in any way limit such rights, remedies or recourse.

- (b) Losses - Subject to **Article 14**, Nalcor may recover all Losses suffered by Nalcor that are due to an Emera Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Nalcor to recover any amounts owed to Nalcor by Emera under this Agreement.
- (c) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

8.10**Suspension and Deemed Delivery of the Nova Scotia Block**

- (a) Emera Cross Default and Set Off - If Emera or an Affiliate of Emera is in default, after any applicable cure period, under either of the Maritime Link Transmission Service Agreements or the Nova Scotia Transmission Utilization Agreement, Nalcor, provided it is in material compliance with its obligations under this Agreement, may provide Notice to Emera that it intends to invoke its rights under this **Section 8.10**. Subject to **Section 8.10(c)**, if, within 14 days from the delivery of the Notice, the Losses due to Nalcor or an Affiliate of Nalcor (the “**Cross Default Amount**”) have not been paid to Nalcor or an Affiliate of Nalcor as provided for in the remedy provisions of the applicable agreement under which the default has occurred or is occurring, Nalcor may suspend the delivery of the Nova Scotia Block, and the portion of the Nova Scotia Block which is not delivered during such suspension (the “**Retained Nova Scotia Block**”) will, for all purposes under this Agreement and all other applicable Formal Agreements, be deemed to be delivered, and Nalcor shall have no further obligations with respect thereto.
- (b) Initial Value of Retained Block - The Retained Nova Scotia Block shall be expressed in MWh and shall be equal to the Cross Default Amount divided by the sum of: (i) the average Reference Day-Ahead Price (expressed in dollars per MWh), and (ii) any average value for Capacity and GHG Credits (expressed in dollars per MWh) (if prices for such Capacity and GHG Credits are published and publicly available for a product which Nalcor is able to sell, in a market which Nalcor is able to access) attributable to the Retained Nova Scotia Block, each of such prices to be averaged over the 365 days prior to the date on which the Cross Default Amount is finally determined by Nalcor, through agreement of Nalcor and Emera or by resolution as a Specified Dispute.
- (c) Dispute Resolution - Nalcor shall not suspend the delivery of the Nova Scotia Block if Emera is contesting a default under either of the Maritime Link Transmission Service Agreements or the Nova Scotia Transmission Utilization Agreement as a dispute, and the matter has not been determined in accordance with the dispute resolution procedure under such agreement. Nalcor and Emera agree that the mediator, arbitrator, independent expert or tribunal pursuant to such dispute resolution procedure, as applicable, will be directed to include in the award:
- (i) all Losses incurred by Nalcor or an Affiliate of Nalcor to the commencement date of the dispute resolution procedure which arise as a result of a default by Emera or an Affiliate of Emera and which have not been paid to Nalcor or an Affiliate of Nalcor pursuant to the provisions of either of the Maritime Link Transmission Service Agreements or the Nova Scotia Transmission Utilization Agreement, as applicable; and
 - (ii) if commercially reasonable, (A) all Losses incurred by Nalcor or an Affiliate of Nalcor which arise as a result of a default by Emera or an Affiliate of Emera under either of the Maritime Link Transmission Service Agreements or the Nova Scotia Transmission Utilization Agreement which have occurred during

the dispute resolution process and have not been remedied in accordance with the provisions of the applicable agreement(s), and (B) a methodology to expedite future disputes referenced under this **Section 8.10**.

The Cross Default Amount and the Retained Nova Scotia Block as referenced in **Section 8.10(a)** shall be adjusted to reflect the award.

- (d) Modify Schedule - Nalcor will modify the Nova Scotia Block Delivery Schedule provided to Emera pursuant to Section 2(d)(i) of **Schedule 5** to account for any Retained Nova Scotia Block.
- (e) Recommencement of Deliveries - Once deliveries of Energy equal to the Retained Nova Scotia Block have been suspended and deemed delivered in full, deliveries of the Nova Scotia Block shall resume in accordance with the provisions of this Agreement.
- (f) Emera Default Causing Failure to Deliver the Nova Scotia Block - Notwithstanding any other provision of this Agreement, if Emera is in default of its obligations under the MLETSA and as a result thereof Nalcor is unable to deliver the Nova Scotia Block, then those portions of the Nova Scotia Block so undelivered will, for all purposes of this Agreement and all other applicable Formal Agreements, be deemed to have been delivered, and Nalcor shall have no further obligations with respect thereto.
- (g) Sole Right, Remedy and Recourse - This **Section 8.10** shall be Nalcor's sole and exclusive right, remedy and recourse under this Agreement with respect to a default by Emera under **Section 8.8(g)**.

8.11 Other Rights

This **Article 8** does not affect any right, remedy or recourse a Party may have in the Inter-Provincial Agreement or the NS Transmission Utilization Agreement.

ARTICLE 9 INVOICING AND PAYMENT

9.1 Invoices

Unless otherwise provided in this Agreement with respect to specific payments, the calendar month is the standard period for invoicing amounts payable by a Party (the "**Payor**") to the other Party (the "**Payee**") hereunder. On or before the 15th day of each calendar month, the Payee shall provide an invoice to the Payor for all amounts in respect of the preceding month chargeable by the Payee to the Payor and, subject to **Section 9.8**, any amounts not previously invoiced to the Payor. The Payee shall provide with the invoice such supporting documents and information as the Payor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced (the "**Supporting Material**").

9.2 Disputed Amounts

Within 30 days after receipt of an invoice from the Payee, the Payor shall report in writing to the Payee any disputed amounts in the invoice, specifying the reasons therefor.

9.3 Time and Method of Payment

Within 30 days after its receipt of a properly prepared invoice, accompanied by acceptable Supporting Material, the Payor shall pay to the Payee the amount stated on the invoice less any amounts disputed pursuant to **Section 9.2** and any withholding required by Applicable Law. The Payor shall make payment by electronic funds transfer or other mutually agreed method to an account designated by the Payee.

9.4 Effect of Payment

Notwithstanding **Section 9.2**, payment of an invoice will not prejudice the right of the Payor to dispute the correctness of the invoice for a period of up to two years after the end of the calendar year in which the Payor received the invoice. Failure by the Payor to dispute charges will not be deemed to be acceptance of the charges or preclude the Payor from subsequently disputing an amount or conducting an audit of the charges within two years after the end of the calendar year in which the Payor received the invoice. Any charges not disputed in writing by the Payor within two years after the end of the calendar year in which the Payor received the invoice for such charges will conclusively be presumed to be true and correct.

9.5 Resolution of Objections

The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after the Payee's receipt of a notification of disputed amounts pursuant to **Section 9.2**. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, the Payor shall pay any amount determined to be owing to the Payee within five Business Days after the Payor receives an invoice from the Payee for such amount.

9.6 Overpayments

Within 15 Business Days after a Payee's discovery or receipt of written evidence of an overpayment, the Payee shall refund the overpayment to the Payor.

9.7 Interest on Overdue Amounts

Any amount not paid by either Party when due, including any charge disputed by the Payor pursuant to **Section 9.2** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 9.3**, and any refund of an overpayment pursuant to **Section 9.6**, will bear interest at the Prime Rate plus three percent per annum, calculated daily not in advance, from the date upon which the payment became due to and including the date of payment, and interest accrued will be payable on demand.

9.8 Waiver of Unbilled Charges

If a Payee entitled to payment in respect of an amount paid by the Payee to a third party fails to invoice the Payor pursuant to this **Article 9** for such amount within six months after the date the Payee made payment to the third party, the right to such payment by the Payor is waived. Notwithstanding the foregoing, a Party may recover Taxes pursuant to a statutory right to recover such Taxes, including the right to recover HST pursuant to Section 224 of the Excise Tax Act.

ARTICLE 10 FORCE MAJEURE AND CURTAILMENT

10.1 Effect of Invoking Force Majeure and Notice

- (a) If by reason of an event of Force Majeure, a Party is not reasonably able to fulfil an obligation, other than an obligation to pay or spend money, in accordance with the terms of this Agreement, then such Party shall:
 - (i) forthwith Notify the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
 - (ii) subject to **Sections 8.3** and **8.5**, be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
 - (iii) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;
 - (iv) as soon as reasonably possible after such Force Majeure, fulfil or resume fulfilling its obligations hereunder;
 - (v) provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and
 - (vi) not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.
- (b) Notwithstanding **Sections 10.1(a)(i)** and **17.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a duration of less than 24 hours shall be given to an

operational representative of the receiving Party. Each Party shall provide telephone and other electronic contact information to the other for the purposes of this **Section 10.1(b)** prior to the start of the Initial Term. Either Party may change such contact information from time to time by giving Notice of such change to the other Party in accordance with **Section 17.1**.

10.2 Allocation of Muskrat Falls Output

If the Muskrat Falls Plant is unable because of a Forgivable Event to generate Energy and Capacity at its full rated capacity in any hour during which Energy comprising a portion of the Nova Scotia Block has been Scheduled, then to the extent the Muskrat Falls Plant is able to generate any Energy and Capacity during such hour, Nalcor shall allocate the available Energy output from the Muskrat Falls Plant on the basis of the following priorities:

- (a) Energy deliveries in respect of all non-firm or interruptible sales from the Muskrat Falls Plant shall be curtailed first; and
- (b) to the extent that the curtailments described in **Section 10.2(a)** are insufficient to resolve a shortage in available Energy, Energy deliveries in respect of all firm or non-interruptible sales from the Muskrat Falls Plant, including those in respect of the servicing of the Nova Scotia Block, NL Native Load and any other firm or non-interruptible commitments by Nalcor, shall be curtailed next on a pro-rata basis.

10.3 Allocation of Nova Scotia Block due to Transmission System Curtailment

- (a) Definition - In this Section, “**Firm Point-to-Point Transmission Service**” means, with respect to the LIL, the Island Interconnected System and the LTA, any transmission service which has equal Energy transmission curtailment priority to transmission service for NL Native Load provided that such transmission service shall not sustain a service curtailment as a result of a First Contingency Loss after the NL System Operator has made system adjustments to restore generation reserve levels. With respect to the ML, it has the meaning set forth in the Maritime Link (Emera) Transmission Service Agreement.
- (b) NL Constraint - If the Nova Scotia Block cannot be delivered to the Delivery Point in full by virtue of a Forgivable Event affecting the LIL, the Island Interconnected System or the LTA, then to the extent the LIL, the Island Interconnected System and the LTA are able to transmit Energy from the MFP to the Delivery Point during such period, the NL System Operator shall curtail Energy transmitted on the LIL and the Island Interconnected System on the basis that the Energy transmitted for the Nova Scotia Block, Firm Point-to-Point Transmission Service and NL Native Load will be curtailed on a pro rata basis.
- (c) NS/ML Constraint - If the Nova Scotia Block cannot be delivered to the Delivery Point in full by virtue of a Forgivable Event affecting the ML or the NS Transmission System, then to the extent the ML and NS Transmission System are able to transmit or receive Energy, as the case may be, from the MFP to the Delivery Point during such

period, the applicable System Operator shall curtail Energy transmitted on the ML on the basis that Energy transmitted for the Nova Scotia Block and for Firm Point-to-Point Transmission Service will be curtailed on a pro rata basis.

10.4 No New Firm Sales during a Curtailment

Nalcor shall not change any delivery schedule or enter into any contractual arrangements for firm sales of Energy, and Emera shall not change the delivery schedule of the Nova Scotia Block during the expected period of any curtailment referred to in **Section 10.2** to the extent that such sales or changed deliveries could affect the curtailment priority and the consequential effect on the delivery of the Nova Scotia Block to the Delivery Point.

10.5 Failure to Deliver Not Excusable

Nalcor shall not rely on Good Utility Practice to suspend or reduce delivery of the Nova Scotia Block in order to redirect the output of the MFP to supply NL Native Load unless such suspension or reduction is expressly permitted under **Section 10.2** or **10.3**.

10.6 Requirements of Good Utility Practice

Notwithstanding any other provision of this Agreement, the Parties agree that their respective bulk energy systems used by them to perform any of their obligations under this Agreement meet the requirements of Good Utility Practice as at the A&R Effective Date.

ARTICLE 11 ASSIGNMENT AND CHANGE OF CONTROL

11.1 Nalcor Assignment Rights

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Nalcor Rights**”), without the prior written consent of Emera, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera substantially in the form attached hereto as **Schedule 7**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor will be deemed to be an assignment

of Nalcor Rights requiring the prior written consent of Emera pursuant to **Section 11.1(a)**, which consent may be arbitrarily withheld.

- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 11.1** will be null and void.

11.2 Emera Assignment Rights

- (a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Emera Rights**”) without the prior written consent of Nalcor, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that Emera enters into an agreement with Nalcor substantially in the form attached hereto as **Schedule 7**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an Emera Affiliate Assignee that would result in such Emera Affiliate Assignee no longer being an Affiliate of Emera will be deemed to be an assignment of Emera Rights requiring the prior written consent of Nalcor pursuant to **Section 11.2(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 11.2** will be null and void.

11.3 Change of Ownership or Control – Nova Scotia Block

Notwithstanding anything else in this Agreement, if any of the Nalcor assets required to deliver the Nova Scotia Block become beneficially owned or beneficially Controlled by any Person other than Nalcor, Emera shall continue to receive the Nova Scotia Block in accordance with this Agreement and any guarantees given in respect of Nalcor’s obligations shall in all events remain in full force and effect.

11.4 Assignment of the Maritime Link (Emera) Transmission Service Agreement

Prior to First Commercial Power and thereafter from time to time, Emera shall assign to Nalcor or an Affiliate of Nalcor as directed by Nalcor, by assignment or assignments on terms satisfactory to Nalcor acting reasonably and in accordance with the MLETSA, Transmission Rights and ancillary rights necessary to deliver to the Delivery Point that portion of the Nova Scotia Block to be delivered during Peak Hours, as conferred on the transmission customer under the MLETSA. Emera shall not permit the amendment of the MLETSA after the Effective Date without the prior

written consent of Nalcor. Prior to the original assignment to Nalcor or an Affiliate of Nalcor, Emera shall not terminate the MLETSA. Nalcor's obligations to deliver the Nova Scotia Block pursuant to this Agreement shall not commence, nor shall the Initial Term commence, until after the applicable Transmission Rights and ancillary rights under the MLETSA have first been so assigned. After First Commercial Power, Nalcor's obligations to deliver the Nova Scotia Block pursuant to this Agreement shall be suspended for any period during which no such assignment is in force, and any Energy not delivered during such period shall, for all purposes under this Agreement and all other applicable Formal Agreements, be deemed to have been delivered, and Nalcor shall have no further obligations with respect thereto.

11.5 Nalcor Option

If any of the assets or arrangements contemplated by the Formal Agreements held by Emera or any Affiliate of Emera become beneficially owned or beneficially Controlled by any government or government-Controlled electrical utility competitor of Nalcor, Nalcor shall have the option to acquire ownership of the Maritime Link. If Nalcor gives Notice to Emera of Nalcor's exercise of such option, the Parties shall negotiate and enter into an agreement containing the terms and conditions upon which the Maritime Link shall be transferred to Nalcor. **Section 1.2(m)(i)** applies to this **Section 11.5**.

ARTICLE 12 DISPUTE RESOLUTION

12.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 6** (the "**Dispute Resolution Procedure**").
- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 12**, without prejudice to either Party's rights pursuant to this Agreement.

12.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the "**Claiming Party**") intending to assert a Claim against the other Party (the "**Recipient Party**") shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party's failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.

- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.
- (c) Disputed Invoices - This **Section 12.2** does not apply to Disputes relating to invoices pursuant to **Article 9**, which shall be governed by **Section 9.5**.

ARTICLE 13

LIABILITY AND INDEMNITY

13.1 Nalcor Indemnity

Nalcor shall indemnify, defend, reimburse, release and save harmless Emera and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the “**Emera Group**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Emera Group by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Nalcor Group occurring in connection with, incidental to or resulting from Nalcor’s obligations under this Agreement.

13.2 Emera Indemnity

Emera shall indemnify, defend, reimburse, release and save harmless Nalcor and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the “**Nalcor Group**”) from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Nalcor Group by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Emera Group occurring in connection with, incidental to or resulting from Emera’s obligations under this Agreement.

13.3 Own Property Damage

For the avoidance of doubt, it is the Parties’ intent that, subject to any right a Party may have to seek compensation from a third party who caused the Loss or from insurance, each Party shall be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements on the site of any of the Defined Assets (including, with

respect to any member of the Nalcor Group, such property of such member of the Nalcor Group, and, with respect to any member of the Emera Group, such property of such member of the Emera Group), howsoever incurred.

13.4 Indemnification Procedure

- (a) Generally - Each Party (each, an “**Indemnitor**”) shall indemnify and hold harmless the other Party and the other Persons as set forth in **Sections 2.2, 13.1 or 13.2**, as applicable, (individually and collectively, an “**Indemnified Party**”) as provided therein in the manner set forth in this Section.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this Section at the Indemnitor’s own expense and by the Indemnitor’s own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor’s receipt of the Indemnified Party’s Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 13.4(h)**.
- (e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any

settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

- (f) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its representatives all books, records, documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable third party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.
- (g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.
- (h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the

Indemnified Party and all other provisions of this Section shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

13.5 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured Claim, neither the Indemnified Party nor the Indemnitor, as the case may be, shall negotiate, settle, retain counsel to defend or defend any such Claim, without having first obtained the prior approval of the insurer(s) providing such insurance coverage.

ARTICLE 14 LIMITATION OF DAMAGES

14.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 13** and this **Article 14** shall apply to any and all Claims.

14.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement except that such consequential, incidental, indirect or punitive damages awarded against a member of the Nalcor Group or the Emera Group, as the case may be, with respect to matters relating to this Agreement, in favor of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 14.2**. For the purposes of this **Section 14.2**, lost revenues or profits in relation to the purchase or sale of Energy or Capacity shall not be considered to be consequential, incidental or indirect damages, provided however that a Party must still establish such lost revenues or profits in accordance with Applicable Law.

14.3 Liquidated Damages

To the extent that any damages required to be paid under **Article 8** of this Agreement are expressly stated to be liquidated damages, the Parties have computed, estimated and agreed upon the amount of such damages as a reasonable forecast of anticipated or actual Losses in view of the difficulty in calculating or determining the consequences of the harm or the amount of the Losses. The Parties agree that such liquidated damages are a genuine pre-estimate of

damages, are not a penalty, and are intended to protect both Parties from uncertainties. The obligation of a Party to pay, and the other Party to accept such amount, as applicable, shall be legally enforceable and binding upon the Parties.

14.4 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim for indemnification by a Party shall be calculated or determined in accordance with Applicable Law, and shall be calculated after giving effect to (i) any insurance proceeds received or entitled to be received in relation to the Claim, and (ii) the value of any related, determinable Tax benefits realized or capable of being realized by the affected Party in relation to the occurrence of such net loss or cost.

14.5 No Breakage Or Other Similar Financing Costs Permitted

Notwithstanding any other provision of this Agreement, neither Party shall be entitled to claim from the other Party any breakage fees or other similar fees or charges by a lender to a Party that are due to such lender by reason of such lender calling for early repayment of debt associated with a Party's financing related to the Formal Agreements or Energy sales by Nalcor or an Affiliate of Nalcor.

ARTICLE 15 REPRESENTATIONS AND WARRANTIES

15.1 Nalcor Representations and Warranties

Nalcor represents and warrants to Emera that as of the A&R Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Nalcor and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

- (e) except as disclosed by it to Emera in writing on or before the A&R Effective Date, there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance hereof, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the A&R Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement;
- (h) it is not aware of any fact about the bulk energy transmission system used by it to perform any of its obligations under this Agreement which would prevent it from meeting the requirements of Good Utility Practice; and
- (i) it will have good and valid title, free of all Encumbrances, to all Energy delivered by it to Emera at the Delivery Point pursuant to this Agreement and to all GHG Credits assigned by it to Emera under this Agreement.

15.2 Emera Representations and Warranties

Emera represents and warrants to Nalcor that as of the A&R Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Emera and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the A&R Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement; and
- (h) it is not aware of any fact about its bulk energy transmission system used by it to perform any of its obligations under this Agreement which would prevent it from meeting the requirements of Good Utility Practice.

ARTICLE 16

CONFIDENTIALITY

16.1 Incorporation of Project NDA

The Parties agree that the Project NDA is incorporated in this Agreement by reference and applies to all Confidential Information disclosed by either Party to the other under or in connection with this Agreement, the Party disclosing Confidential Information being a Disclosing Party as defined in the Project NDA, and the Party receiving Confidential Information being a Receiving Party as defined in the Project NDA.

16.2 Disclosure of Agreement

Each Party hereby agrees to the other Party making this Agreement public at any time and from time to time after the Effective Date.

ARTICLE 17
MISCELLANEOUS PROVISIONS

17.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Chief Executive Officer
Fax: (709) 737-1782

with a copy to:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Corporate Secretary
Fax: (709) 737-1782

To Emera:

Emera Inc.
1223 Lower Water Street
Halifax, NS
B3J 3S8
Attention: Corporate Secretary
Fax: (902) 428-6112

with a copy to:

NSP Maritime Link Incorporated
9 Austin Street
St. John's, NL
A1B 4C1
Attention: President
Fax: (709) 722-2083

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission and confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt; provided however that if in any case such day is not a Business Day or if the Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Either Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Party.

17.2 **Prior Agreements**

Except for the Assignment of Energy and Capacity Agreement dated January 28, 2013 among Emera, NSP Maritime Link Incorporated and Nalcor, this Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof (including the Term Sheet, the Sanction Agreement and, subject to **Section 1.6**, the Original ECA). There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

17.3 **Counterparts**

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

17.4 **Expenses of Parties**

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

17.5 **Announcements**

No announcement with respect to this Agreement shall be made by either Party without the prior approval of the other Party. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Party before making any such announcement and gives due consideration to the views of the other Party with respect thereto. Both Parties shall use reasonable efforts to agree on the text of any proposed announcement.

17.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the Nova Scotia Block shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting either Party as the agent or legal representative of the other Party for any purpose nor to permit either Party to enter into agreements or incur any obligations for or on behalf of the other Party.

17.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

17.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

17.9 Time of the Essence

Time shall be of the essence.

17.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by both Parties.

17.11 No Waiver

Any failure or delay of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

17.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

17.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

17.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

17.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

17.16 Capacity of Nalcor

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy,
in the presence of:



Name: Peter Hickman

NALCOR ENERGY

By: 

Name: Ed Martin
Title: President and Chief Executive Officer

By: 

Name: Rob Hull
Title: General Manager, Finance

We have authority to bind the corporation.

Executed and delivered by Emera Inc.,
in the presence of:

Name: Rene Gallant

EMERA INC.

By: _____
Name: Chris Huskilson
Title: President and Chief Executive Officer

By: _____
Name: Nancy Tower
Title: Executive Vice-President, Business
Development

We have authority to bind the company.

IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Nalcor Energy,
in the presence of:

NALCOR ENERGY

By: _____
Name: Ed Martin
Title: President and Chief Executive Officer

Name: Peter Hickman

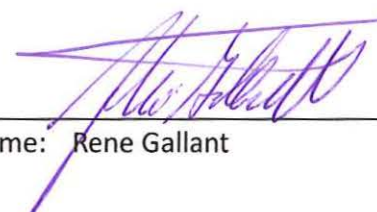
By: _____
Name: Rob Hull
Title: General Manager, Finance

We have authority to bind the corporation.

Executed and delivered by Emera Inc.,
in the presence of:

EMERA INC.

By:  _____
Name: Chris Huskison
Title: President and Chief Executive Officer



Name: Rene Gallant

By:  _____
Name: Nancy Tower
Title: Executive Vice-President, Business Development

We have authority to bind the company.

ENERGY AND CAPACITY AGREEMENT

SCHEDULE 1

FORMAL AGREEMENTS

FORMAL AGREEMENTS

1. Maritime Link - Joint Development Agreement
2. Energy and Capacity Agreement
3. Maritime Link (Nalcor) Transmission Service Agreement
4. Maritime Link (Emera) Transmission Service Agreement
5. Nova Scotia Transmission Utilization Agreement
6. New Brunswick Transmission Utilization Agreement
7. MEPCO Transmission Rights Agreement
8. Interconnection Operators Agreement
9. Joint Operations Agreement
10. Newfoundland and Labrador Development Agreement
11. Labrador-Island Link Limited Partnership Agreement
12. Inter-Provincial Agreement
13. Supplemental Agreement

ENERGY AND CAPACITY AGREEMENT

SCHEDULE 2

[INTENTIONALLY DELETED]

ENERGY AND CAPACITY AGREEMENT

SCHEDULE 3

CALCULATION OF TRANSMISSION LOSSES

CALCULATION OF TRANSMISSION LOSSES

Nova Scotia Block Transmission Losses

1.0 Calculating Monthly Transmission Losses

In order to determine the amount of the Nova Scotia Block to be delivered by Nalcor at the Delivery Point, two transmission loss factors, each associated with one of the two transmission districts used to deliver the Nova Scotia Block, will be applied, in accordance with **Section 2.0**, to Emera's Nova Scotia Block entitlement, as measured at Muskrat Falls. The transmission loss factors to be applied will be determined each month as described in this Schedule.

The two transmission districts used to deliver the Nova Scotia Block to the Delivery Point are the NL Transmission District and the Maritime Link Transmission District (as defined below, respectively). The transmission loss factor to be applied for these individual transmission districts in each month will be the ratio of the total transmission losses on the associated transmission system to the total energy received into the associated transmission system for the 12 month period ending immediately prior to the calendar month preceding the given month (the "**Reference Period**"), as described in greater detail below.

Accordingly, there are two components of the loss factor to be applied to the Nova Scotia Block: (i) the NL Transmission District transmission loss factor, and (ii) the Maritime Link Transmission District transmission loss factor (which together comprise the "**Loss Factor**").

"NL Transmission District": The NL Transmission District is comprised of the LIL and the bulk 230 kV AC portion of the Island Interconnected System, including all equipment and radial lines rated at 230 kV and above used to connect the bulk system to NL generating plants or to equipment rated at lower voltage levels to supply NL Native Load. The NL Transmission District also includes all reactive devices whether static or synchronous, including associated dedicated transformers connected directly to the 230 kV or higher voltage equipment. It does not include generator step-up transformers or transformers stepping down to voltages below 230 kV.

"Maritime Link Transmission District": The Maritime Link Transmission District is comprised of the HVdc facilities owned by Emera in NL, including the converter station at Bottom Brook, the HVdc transmission line between NL and the converter station at Woodbine, NS and any radially-connected AC transmission lines connecting the Woodbine converter station to the NS Transmission System.

2.0 Application of Loss Factor to the Nova Scotia Block

The Transmission Losses applicable to the Nova Scotia Block scheduled for delivery to the Delivery Point each hour shall be calculated as follows:

Nova Scotia Block at Delivery Point = Nova Scotia Block at Muskrat Falls (gross amount) x (1 – NLLSF) x (1-MLLSF) measured in MW

where : “NLLSF” = NL Transmission District Loss Factor, expressed as a percentage; and
 “MLLSF” = Maritime Link Transmission District Loss Factor, expressed as a percentage.

The foregoing calculations will be conducted in a manner that is consistent with the sample calculations provided in Appendix A – Loss Methodology 2018 Annual Chart, attached to this **Schedule 3**.

3.0 Loss Factor Calculation

The Loss Factor to be applied to Emera’s gross Nova Scotia Block entitlement, as measured at Muskrat Falls in each hour of the month shall, subject to paragraph (c), be determined using actual Energy measurements for each of the NL Transmission District and the Maritime Link Transmission District for the Reference Period, as follows:

- (a) the NLLSF is the ratio of the transmission losses associated with the NL Transmission District during the Reference Period to the NL Transmission District Supply Load during the Reference Period;
- (b) subject to the provisions of the MLETSa dealing with transmission losses, the MLLSF is the ratio of the Maritime Link Transmission District transmission losses during the Reference Period to the Energy delivered to the Maritime Link at the 230 kV bus at Bottom Brook terminal station during the Reference Period; and
- (c) the Loss Factor to be applied during the first 13 months of delivery of the Nova Scotia Block over the ML shall be based upon the methodology provided for in this **Schedule 3**, provided that instead of using actual Energy amounts in the performance of the relevant calculations, the calculations will use forecasts of Energy quantities associated with each of the Nova Scotia Block, the Nalcor exports on the ML, NL Native Load and Nalcor’s expected Energy production from its sources to supply these amounts.

3.1 NL Transmission District Supply Load

The NL Transmission District Supply Load (NLH 230 kV system load) during a Reference Period is all Energy delivered during that Reference Period by the bulk 230 kV AC portion of the Island Interconnected System (as described above) to serve NL Native Load and for export over the Maritime Link (including the Nova Scotia Block), plus the Energy losses associated with the LIL and the bulk 230 kV AC portion of the Island Interconnected System during that Reference Period.

3.2 LIL Losses Determination

The Energy losses on the LIL during a Reference Period are all losses calculated during that Reference Period from the 315 kV AC side of the LIL in Labrador to the 230 kV AC bus at Soldiers Pond.

3.3 Island Interconnected System Losses Determination

The Energy losses on the Island Interconnected System during a Reference Period are all 230 kV transmission line losses and the losses associated with the voltage support equipment such as any synchronous condensers, reactors, capacitors and static var compensators, calculated during that Reference Period. The transmission losses associated with the Island Interconnected System will be the sum of the net Energy received on the 230 kV network less the sum of the net Energy delivered from the 230 kV network at each measurement point during that Reference Period.

3.4 ML Losses Determination

The Maritime Link losses are all Energy losses from the 230 kV bus at Bottom Brook to the Delivery Point during a Reference Period, calculated in accordance with the MLETSA.

4.0 Reconciliation

For each month, a reconciliation shall be performed to address any difference between (i) the Energy that has been contributed by Emera to the NL Transmission District and the Maritime Link Transmission District on account of Transmission Losses, as calculated in accordance with **Section 2.0**, and (ii) Emera's proportionate share of the measured transmission losses on the NL Transmission District and the Maritime Link Transmission District. For the purpose of performing such monthly reconciliation, the following shall apply:

- (a) following the end of the month, the actual monthly Energy contributed by Emera to account for Transmission Losses (the **"Nova Scotia Block Monthly Contributed Losses"**) shall be calculated as equal to the difference between:
 - (i) monthly Nova Scotia Block Energy measured at the Delivery Point/ $((1 - \text{MLLSF}) \times (1 - \text{NLLSF}))$; and
 - (ii) monthly Nova Scotia Block Energy measured at the Delivery Point;
- (b) following the end of the month, the NL System Operator will compute the actual transmission losses for the Maritime Link Transmission District and the NL Transmission District during the month. Such transmission losses will be expressed as ratios to the total amounts of Energy injected, respectively, into the Maritime Link Transmission District and the NL Transmission District during the month (the **"Actual MLLSF"** and the **"Actual NLLSF"**, respectively);

- (c) the total actual proportionate share of Energy that Emera is responsible to contribute to the NL Transmission District and the Maritime Link Transmission District to account for Transmission Losses in respect of the month (the “**Actual Nova Scotia Block Energy Losses Share**”) shall be calculated as the difference between:
 - (i) monthly Nova Scotia Block Energy measured at the Delivery Point/((1-Actual MLLSF) x (1-Actual NLLSF)) and
 - (i) monthly Nova Scotia Block Energy measured at the Delivery Point; and
- (d) the difference between the Actual Nova Scotia Block Energy Losses Share and the Nova Scotia Block Monthly Contributed Losses (the “**ECA Loss Adjustment**”) will be, as appropriate, added to or subtracted from the Nova Scotia Block Energy deliveries in the following month, as is provided for by Section 2 of **Schedule 5**, and at times as agreed by the Parties. Section 1.2(m)(i) of the Agreement applies to this **Section 4.0**.

5.0 Metering

Within 120 days after the A&R Effective Date, the Parties will agree on metering and measuring standards used in the calculation of Transmission Losses, which standards will be consistent with Good Utility Practice. Section 1.2(m)(i) of the Agreement applies to this **Section 5.0**.

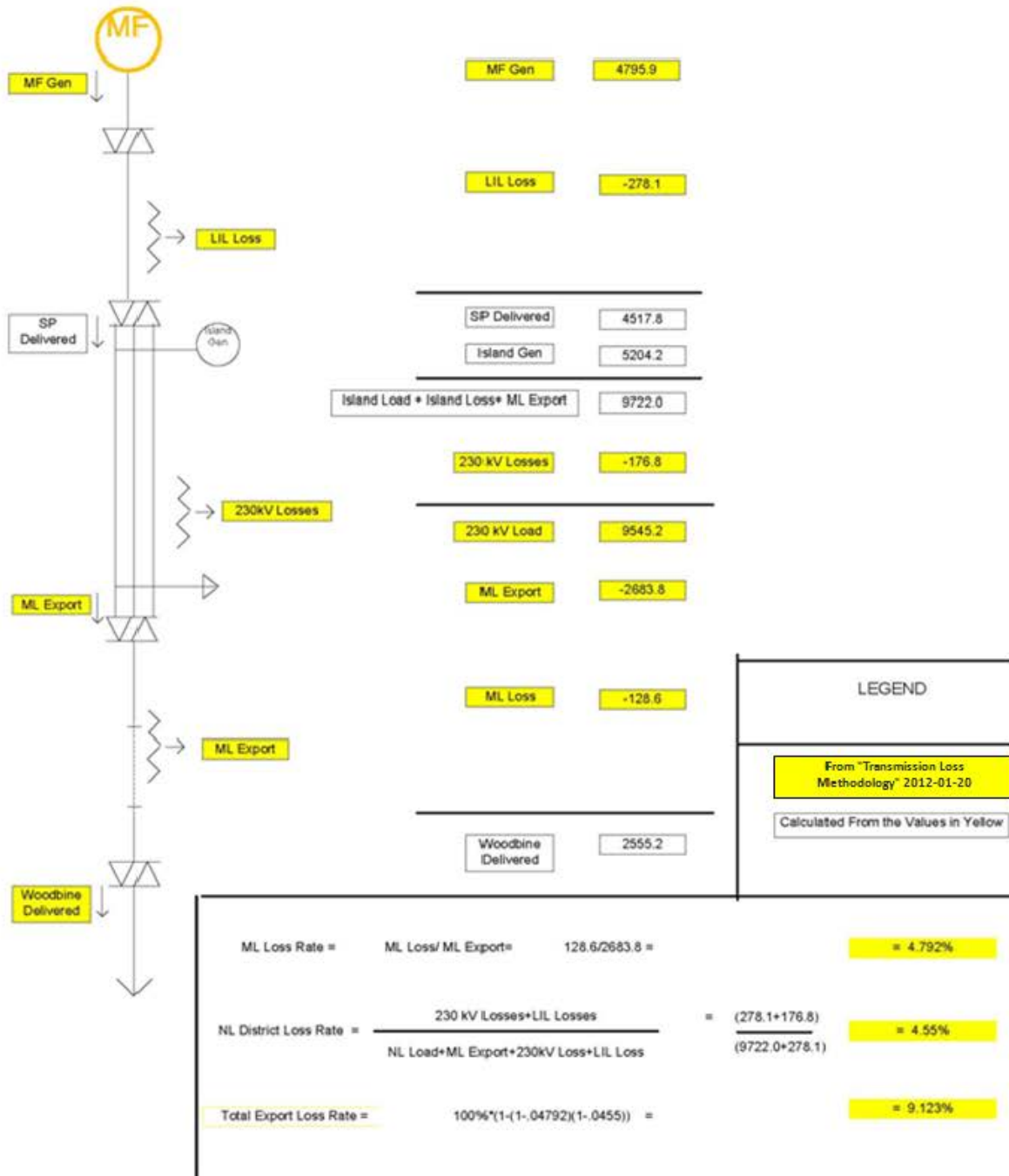
6.0 Disputes

Any Dispute relating to the determination of Transmission Losses applicable to the Nova Scotia Block pursuant to this **Schedule 3** shall be a Specified Dispute.

**Appendix A
to Calculation of Transmission Losses**

LOSS METHODOLOGY 2018 ANNUAL CHART

Loss Methodology 2018 Annual



ENERGY AND CAPACITY AGREEMENT

SCHEDULE 4

CALCULATION OF SUPPLEMENTAL ENERGY

CALCULATION OF SUPPLEMENTAL ENERGY

1. Supplemental Energy, if any, is a component of the Nova Scotia Block and is calculated in accordance with the provisions of this **Schedule 4**.
2. Prior to each submission to the UARB made before First Commercial Power to support a UARB capital cost approval (each, an “**Application**”), and using the methodology and assumptions set out below, the estimated amount of Supplemental Energy, if any, required to be delivered to equate to the unit energy cost as calculated in **Section 2(a)** below, shall be calculated by:
 - (a) determining the unit energy cost using a 50 year amortization based on the financial model as noted in **Section 7** adjusted only to insert, or amend and insert, the then most current inputs as more particularly described in **Section 8**; and
 - (b) adjusting only the amortization period above to equal 35 years, and eliminating all revenues and costs beyond the Initial Term.
3. Unless the Parties agree otherwise, the final determination of the amount of Supplemental Energy as described in this Schedule (the “**Final Determination**”) will be made, using the then most current financial model inputs, no later than the later of:
 - (a) that date which is six months after First Commercial Power; and
 - (b) the date of the settlement of the calculations described in Section 5.2(b) of the Joint Operations Agreement.

Emera shall prepare and send to Nalcor a first draft of the Final Determination, together with supporting documentation, at least one month prior to the date of Final Determination. Within two weeks thereafter, Nalcor will Notify Emera whether it agrees with Emera’s calculations or not.
4. Until the Final Determination is made, Nalcor shall deliver to Emera amounts of Supplemental Energy based upon the then most current calculation of Supplemental Energy as contained in the then most current Application. After the Final Determination is made, any necessary increases or decreases in the amounts of Supplemental Energy to be Scheduled and delivered to conform with the Final Determination amount shall be made as soon as possible but no later than 12 months subsequent to the Final Determination date.
5. Scheduling for delivery of Supplemental Energy will be determined by Nalcor, and delivered to Emera in equal annual amounts over each of the first five years of the Initial Term at the Delivery Point during the months of January to March and November to December during Off-Peak Hours.
6. For greater clarity, the purpose of the calculation referred to in **Section 2** is to reduce the timeframe for providing the Nova Scotia Block to the Initial Term. The calculation will not address:
 - (a) any costs submitted to the UARB that have been disallowed; or
 - (b) the achievement of a desired pricing target.

7. Supplemental Energy will be determined and calculated in accordance with an agreed financial model, two identical copies of which are stored on compact discs, each disc or other digital storage medium identified as “Supplemental Energy Calculation, Schedule 4 to the Amended and Restated Energy and Capacity Agreement between Nalcor Energy and Emera Inc. made as of July 31, 2012”, each disc initialled by authorized representatives of Nalcor Energy and Emera Inc.
8. The formulas and amounts contained in the financial model have been agreed upon by the Parties with the exception of the inputs described in the following table, which shall be adjusted using the most current available estimates at the times set forth in **Sections 2 and 3**.

Input	Source (all to equal the amounts contained in the Application)
amount of annual energy to be delivered	0.986 TWh
transmission losses	The then most current estimate of transmission losses as determined pursuant to Schedule 3 of this Agreement.
capital costs and timing profile	The then most current estimate of Capital Costs as defined in the ML-JDA using principles set out in the ML-JDA Cost Accounting Protocol.
AFUDC rate (and discount rate)	The then most current estimate of or actual AFUDC (as defined in the ML-JDA) rate based upon the debt equity ratio, rate of return on equity and interest and similar financing rates as described below.
operating and maintenance costs	The most recent estimate of annual O&M costs for the Maritime Link for the 50 years after the ML Commercial Operation Date, being the Initial LTAMP Cost Estimate for the Maritime Link as described in Section 5.1(b) of the JOA and the In-Service LTAMP Cost Estimate for the Maritime Link as described in Section 5.2(b) of the JOA; provided that the “Service Life” as used in the calculation of such estimates shall be deemed to be 50 years. In addition, any payment of adjustment amount as described in Section 5.5(b) of the Joint Operations Agreement.
tax rate	The combined federal and provincial statutory income tax rate of the entity that owns the Maritime Link, based upon the then most current legislation.
capital cost allowance class(es) for income tax purposes	The CCA class(es) that are determined to apply to the capital costs for the Maritime Link based on the then most current federal legislation.

Input	Source (all to equal the amounts contained in the Application)
debt %	Based upon the then most current expectation of the debt equity ratio for the ML.
equity %	Based upon the then most current expectation of the debt equity ratio for the ML.
rate of debt financing	The then most current estimate of the interest rate and similar financing costs applicable to debt financing, expressed as an annual effective rate.
rate of return on equity	The then most current rate of return on equity approved by the UARB in respect of the ML, or the then most current estimate thereof, expressed as an annual effective rate.

Emera shall prepare and send to Nalcor a first draft of the inputs, together with supporting documentation, at least one month prior to the date of an Application. Within two weeks thereafter, Nalcor will Notify Emera whether it agrees with Emera's calculations or not.

ENERGY AND CAPACITY AGREEMENT

SCHEDULE 5

NOVA SCOTIA BLOCK ENERGY MANAGEMENT

NOVA SCOTIA BLOCK ENERGY MANAGEMENT

1. Definitions

The “**Reliability Coordinator**” is the highest level of authority that is responsible for the reliable operation of the bulk energy system in both next day analysis and real time operation. This entity must have a purview that is broad enough to enable the calculation of “Interconnection Reliability Operating Limit” as defined in the Interconnection Operators Agreement, which may be based on the operating parameters of other transmission systems beyond the NS System Operator’s purview. The Reliability Coordinator must have the wide area view of the bulk energy system and has the operating tools, processes and procedures, including the authority to prevent or mitigate emergency operating situations.

The Reliability Coordinator for Nova Scotia is the NB system operator and its successor entities. The NL System Operator and its successor entities will fulfill the Reliability Coordinator responsibility for the NL bulk energy system.

2. Scheduling and Deliveries

- (a) The time periods referred to in this **Section 2** shall apply **notwithstanding** the provisions of Section 1.2(j) of the Agreement.
- (b) Scheduling and delivery provisions are subject to the NS System Operator’s obligations to its Reliability Coordinator.
- (c) The Nova Scotia Block (other than the Supplemental Energy) will be delivered by Nalcor on a 16-hour per day basis. The Nova Scotia Block delivery period will be the Peak Hours of each day of the year (the “**Nova Scotia Block Delivery Period**”). The Supplemental Energy, over the first five years of the Initial Term will be delivered by Nalcor during the months of January, February, March, November and December, during the Off-Peak Hours of each day of the applicable month.
- (d) Nalcor and Emera will work cooperatively to optimize the profile of the Nova Scotia Block Delivery Schedule including when applicable the Supplemental Energy provided however that the following is specifically agreed:
 - (i) On a daily basis, by 0830 APT, Nalcor will provide the Nova Scotia Block Delivery Schedule including when applicable Supplemental Energy for the next 168 hours.
 - (ii) Emera will create a profiled schedule, in 30-minute increments for the next day (or 3 to 6 days in the case of weekends, long weekends and extended holiday periods). Emera will provide the schedule to Nalcor and Nalcor will respond with its acceptance within timeframes that will be mutually agreed by the Parties, from time to time, in order to meet its respective scheduling needs including each Party’s obligations to its respective Reliability Coordinator. Failure to so agree will be a Specified Dispute. Section 1.2(m)(i) of the Agreement applies to this **Section 2(d)(ii)**.

- (iii) The Nova Scotia Block Delivery Period, and associated ramping periods, can be shifted to commence up to 90 minutes earlier or later.
 - (iv) Given that system operating constraints do not allow for the instantaneous delivery of the full Nova Scotia Block, a period of up to 15 minutes will be allowed for ramping up and down on either side of the delivery period.
 - (v) The profile of the Nova Scotia Block including the Supplemental Energy can be modified within a band of plus or minus 40 MW, of the Nova Scotia Block Associated Capacity, scheduled in 30 minute increments, during the course of the Nova Scotia Block Delivery Period.
 - (vi) Throughout the course of the day, Nalcor will provide Capacity up to the unsubscribed portion of the Nova Scotia Block Associated Capacity that can be called upon within 10 minutes' notice. By way of example, if the delivered amount at a point in time is 150 MW and the NS Block Associated Capacity is 170 MW, Nalcor will provide Capacity to 170 MW.
 - (vii) Energy that is being delivered that is above the Nova Scotia Block Associated Capacity is non-firm and therefore subject to curtailment including the requirement to deliver Capacity to other Nalcor customers.
 - (viii) Emera will have the ability to shape Energy above the Nova Scotia Block Associated Capacity over each 24-hour period, to the extent the required Maritime Link transmission capacity is not in use by Nalcor for a committed sales transaction or the total capacity of the MFP that has not been scheduled under contract to another party is sufficient to meet the request.
 - (ix) Within the day, upon notice of at least 60 minutes, Emera may request that the 30-minute schedule deliveries be changed provided that the total daily energy scheduled is not changed. Nalcor shall, in its discretion, not to be unreasonably exercised, provide a timely response to the degree any such request will be accommodated.
 - (x) On a weekly basis, the Parties will reconcile any Energy shortfall or over-delivery that is directly attributable to shaping and make adjustments in the coming week's schedule to compensate for the shortfall or over-delivery amounts. On a monthly basis, the Parties will reconcile any Energy shortfalls or over-deliveries, that are not able to be accommodated within the weekly adjustments, and that are directly attributable to shaping, by making adjustments in the coming month's schedule.
- (e) Nalcor and Emera shall, no less than once every year during the Term, beginning at least one month prior to the expected date of First Commercial Power, meet and consider the opportunity for the creation of additional value for both Parties through additional flexibility in the scheduling of the Nova Scotia Block including the Supplemental Energy, including shaping the profile, ramp rates and hours of delivery (subject to the condition that total daily deliveries of Energy does not change).
- (f) Nothing in this **Schedule 5** derogates from Emera's rights under Article 8 of the Agreement.

3. Regulation Service

Within 120 days after the A&R Effective Date, the Parties will negotiate to enter into an agreement whereby Nalcor will provide Regulation Service with respect to the Nova Scotia Block to Emera for the Initial Term. The agreement, which shall be subject to approval of the NL Public Utilities Board or other applicable Authorized Authority, shall provide that:

- (a) Regulation Service will provide for the full range of plus or minus 20 MW around the average Scheduled Energy for each half-hour scheduling interval. It will be used as part of Emera's automatic generation control for tie line regulation, load following and operator base point control, all to manage load changes within the NS balancing authority area;
- (b) notwithstanding **Section 3(a)** of this **Schedule 5**, Emera shall not be entitled to request the use of Capacity in excess of the Associated Capacity of the Nova Scotia Block unless Nalcor has unused transmission Capacity in the ML pursuant to the Maritime Link (Nalcor) Transmission Service Agreement ("**Excess Transmission Capacity**");
- (c) if Emera requests and Nalcor is able to provide Excess Transmission Capacity pursuant to **Section 3(b)** of this **Schedule 5**, Nalcor shall be entitled to withdraw such Excess Transmission Capacity if it at any point it does not continue to have unused transmission Capacity on the ML;
- (d) the fee Nalcor shall charge Emera shall be based on cost of service principles and all other terms shall be consistent with those typically provided for in agreements for Regulation Service between balancing authorities; and
- (e) Nalcor shall not be liable to provide the Regulation Service during a Forgivable Event.

A failure to reach agreement under this **Section 3** shall be a Specified Dispute. Section 1.2(m)(i) of the Agreement applies to this **Section 3**. In any oral or written submission to the NL PUB or other applicable Authorized Authority in respect of any application to approve the Regulation Service Agreement, whether the agreement was arrived at by the agreement of the Parties or pursuant to a Specified Dispute, each Party agrees to support, and Nalcor shall cause NLH to support, any such application and not to seek or support any amendment to the agreement.

4. Coordination of Scheduled Maintenance and Provision of Information

The Parties will:

- (a) coordinate Planned Maintenance Periods and, to the extent known, repairs required by reason of Safety Events, by sharing the following maintenance plans and schedules:
 - (i) by October 15 of each year, each Party will provide the other with its respective System Operator's published annual preliminary plan for significant

outages of transmission elements on the NS Transmission System and the NL Transmission System for the upcoming calendar year;

- (ii) by December 30 of each year, the Parties will provide each other with their respective System Operator's published annual outage plan coordinating both transmission and generation maintenance activities for the upcoming calendar year; and
 - (iii) Nalcor will provide Emera with a 10 year ahead maintenance outage plan for the MFP which may affect delivery of the Nova Scotia Block, which plan shall be updated annually; and
- (b) provide as soon as can be reasonably known, schedules of any unforeseen Planned Maintenance Period, or unforeseen repairs required by reason of a Safety Event.

The Parties shall not provide any of the information referred to in this Section to Marketing Personnel to the extent it is not publicly available.

5. Late Scheduled Deliveries

(a) Time for Delivery

- (i) Nalcor shall deliver Block A Undelivered Energy ("**Base Energy**") during the corresponding periods of Peak Hours and Off Peak Hours which had been scheduled for the original deliveries of such Energy over such periods of time as are determined by the Parties in accordance with the procedure for scheduling the delivery of such Energy set forth in **Section 5(b)** of this **Schedule 5** (in this Section, the "**Late Delivery Procedure**").
- (ii) Nalcor shall deliver Compensation Energy during such hours over such periods of time as may be determined in accordance with the Late Delivery Procedure.

(b) Late Delivery Procedure

- (i) In respect of Compensation Energy, Emera shall deliver to Nalcor within 20 days or as soon as is reasonably practicable after the start of the period of non-delivery of Block B Undelivered Energy, and thereafter every seven days or as soon as is reasonably practicable until 20 days after the end of the period of non-delivery, statements showing the method of calculation selected by Emera pursuant to Section 8.4(a), the amount of Compensation Energy to be delivered and the calculations resulting in such amount (any such statement being referred to in this Section as a "**Late Energy Statement**").
- (ii) Nalcor may within 15 days of receipt of a Late Energy Statement dispute the amounts or the calculations in a Late Energy Statement as a Specified

Dispute under the Dispute Resolution Procedure, provided that pending the resolution of the Specified Dispute Nalcor shall continue to Schedule and deliver the disputed amounts in accordance with the Late Delivery Procedure.

- (iii) Within two days or as soon as is reasonably practicable after (A) Nalcor becomes obliged to deliver Base Energy; or (B) Nalcor receives a Late Energy Statement, Nalcor shall deliver to Emera a chart setting out a schedule showing the Energy, both interruptible and uninterruptible, available for each hour of every day of the periods when Nalcor can deliver amounts comprising the amounts of Base Energy or the amounts set forth in the Late Energy Statement (a “**Late Energy Options Chart**”). The deliveries set out in the Late Energy Options Chart will be selected by Nalcor in accordance with the following guidelines (“**Selection Guidelines**”) unless otherwise agreed by the Parties:
 - A. Energy Source – The Base Energy or Compensation Energy, as the case may be, will only be Scheduled for generation from the Muskrat Falls Plant or from Stored Energy;
 - B. Reliability of Supply – Energy deliveries in respect of all firm or non-interruptible sales from the Muskrat Falls Plant, including those in respect of the servicing of the Nova Scotia Block, NL Native Load and any other firm or non-interruptible commitments by Nalcor will not be adjusted to accommodate the delivery of Base Energy or Compensation Energy, as the case may be, unless otherwise agreed by the affected parties;
 - C. Suspension of Interruptible Sales – Energy deliveries in respect of all non-firm or interruptible sales from the Muskrat Falls Plant shall be suspended to the extent that such sale or combination of sales would affect the delivery of Base Energy or Compensation Energy;
 - D. Similar Value – The Base Energy will be delivered during the corresponding periods of Peak Hours and Off-Peak Hours which had been scheduled for the original deliveries of such Energy; and
 - E. Safety and Environment – The deliveries will be made by Nalcor and accepted by Emera only when consistent with the safe operation of the NL and NS Bulk Energy Systems.
- (iv) Within two days or as soon as is reasonably practicable after receiving a Late Energy Options Chart, Emera shall select from the Late Energy Options Chart and notify Nalcor as to which quantities of Energy and at which times it will take delivery of the Energy described in the Late Energy Statement and Nalcor shall commence

delivering Energy and Capacity associated with such Energy in accordance with Emera's Notice. If the delivery options set out in a Late Energy Options Chart are not satisfactory to Emera acting reasonably, the Parties will negotiate an alternate delivery schedule, failing which either Party may submit the dispute as a Specified Dispute under the Dispute Resolution Procedure. Section 1.2(m)(i) of the Agreement applies to the foregoing sentence. In making his or her award, the independent expert shall take into account the adherence by Nalcor to the Selection Guidelines in selecting the delivery options set out in the Late Energy Options Chart. Pending resolution of the Specified Dispute, Emera may select delivery options from the Late Energy Options Chart and Nalcor shall deliver Energy in accordance with those instructions. After the resolution of the Specified Dispute, Nalcor shall deliver Energy to Emera in accordance with that resolution and the Parties may request that the reconciliation of the already implemented revised schedule with that schedule ordered by the independent expert be part of the award of the independent expert.

(v) Nalcor shall revise and deliver to Emera any Late Energy Options Chart if:

- A. additional delivery options become available because of reduced sales of Energy by Nalcor from those anticipated at the time of the original delivery; or
- B. changes in Nalcor's ability to serve the NL Native Load require Nalcor to reduce the amount of Base Energy or Compensation Energy to be delivered or the times of delivery set out in a Late Energy Options Chart (but for greater certainty, no such unanticipated increase will result in a decrease in normal deliveries of the Nova Scotia Block), provided that no such reduction shall be effective unless notice of such reduction is given by Nalcor to Emera as soon as reasonably practicable and in any event at least 24 hours prior to the time such reduction is required,

and the provisions of (iv) above shall apply as if such revisions constituted a new Late Energy Options Chart.

(vi) Nalcor shall not Schedule or enter into arrangements for contractual firm or non-firm export sales after the time Nalcor becomes obligated to deliver Block A Undelivered Energy or Compensation Energy, as the case may be, to the extent that any such sale or combination of sales would affect its obligation to deliver Energy as set forth in this Section.

(vii) Failure by the Parties to deliver, within the time limits set out in this Section, either a Late Energy Statement under paragraph (i), or a Notice under paragraph (iv) or a Late Energy Options Chart will not release Nalcor from any obligation to deliver any Energy which, but for such failure, it would have been obliged to deliver; provided, however, that the Party must so deliver as soon as is reasonably practicable and pay to the other Party any Losses

reasonably incurred by the other Party arising in connection with any such failure.

(c) First In First Out

For greater certainty, any Energy delivered under this **Section 5** shall be applied first to the Energy first undelivered.

(d) Final Obligation

Provided that Nalcor satisfies the foregoing requirements and its obligations under Section 8.5 to deliver any undelivered Energy, it shall have no further obligations or liabilities in respect of its initial non-delivery in accordance with the original delivery schedule.

ENERGY AND CAPACITY AGREEMENT

SCHEDULE 6

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

SECTION 1 – INTERPRETATION

1.1 Definitions

In this Schedule, the definitions set forth in the Articles of Agreement apply and in addition thereto:

“Appointment Date” has the meaning set forth in **Section 6.4**;

“Arbitration Act” means the *Arbitration Act* (Newfoundland and Labrador);

“Arbitration Notice” has the meaning set forth in **Section 5.1(a)**;

“Arbitration Procedure” means the provisions of **Section 5**;

“Arbitrator” means an arbitrator appointed pursuant to the Arbitration Procedure;

“Articles of Agreement” means the main body of the Agreement;

“Chair” means the person elected or appointed to chair the Tribunal;

“Code” means the Commercial Arbitration Code as set out in the *Commercial Arbitration Act* (Canada) as of the Effective Date, a copy of which is attached hereto as **Appendix A**;

“Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party consents to arbitration of the Dispute referred to in the Arbitration Notice;

“Delegate” has the meaning set forth in **Section 6.3(c)**;

“Dispute Context” has the meaning set forth in **Section 6.6**;

“document” includes a film, photograph, videotape, chart, graph, map, plan, survey, book of account, recording of sound, and information recorded or stored by means of any device;

“Expert Determination Procedure” means the provisions of **Section 6**;

“General Dispute” means a Dispute that is not a Specified Dispute;

“Independent Expert” means the Person appointed as such to conduct an expert determination in accordance with the Expert Determination Procedure;

“Information” means all documents and information, including Confidential Information, disclosed by a Party for the purposes of this Dispute Resolution Procedure;

“Initial Meeting” has the meaning set forth in **Section 6.8**;

“Mediation Notice” has the meaning set forth in **Section 4.1(a)**;

“Mediation Procedure” means the provisions of **Section 4**;

“Mediation Response” has the meaning set forth in **Section 4.1(d)**;

“Mediator” means the mediator appointed pursuant to the Mediation Procedure;

“Negotiation Procedure” means the provisions of **Section 3**;

“Non-Consent to Arbitration” means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party does not consent to arbitration of the Dispute referred to in the Arbitration Notice;

“Notified Party” has the meaning set forth in **Section 5.1(a)**;

“Notifying Party” has the meaning set forth in **Section 5.1(a)**;

“Referral Notice” has the meaning set forth in **Section 6.1**;

“Referring Party” has the meaning set forth in **Section 6.1**;

“Requesting Party” has the meaning set forth in **Section 4.1(a)**;

“Responding Party” has the meaning set forth in **Section 6.1**;

“Response” has the meaning set forth in **Section 6.9(b)**;

“Review Notice” has the meaning set forth in **Section 3.1**;

“Specified Dispute” means a Dispute required to be finally resolved by expert determination and specified as such in the Articles of Agreement;

“Submission” has the meaning set forth in **Section 6.9(a)**;

“Terms of Reference” has the meaning set forth in **Section 6.4**; and

“Tribunal” means either a single Arbitrator or a panel of Arbitrators, as the case may be, appointed pursuant to the Arbitration Procedure to serve as the arbitrator or arbitrators of a General Dispute.

1.2 Section References

Unless otherwise indicated, all references in this Schedule to a “Section” followed by a number and/or a letter refer to the specified Section of this Schedule.

1.3 **Appendix**

The following Appendix is attached to and incorporated by reference in this Schedule, and is deemed to be part hereof:

Appendix A - *Commercial Arbitration Code (Canada)*

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 **Purpose and Sequence of Dispute Resolution**

The purpose of this Schedule is to set forth a framework and procedures to resolve any Disputes that may arise under the Agreement in an amicable manner, in private and confidential proceedings, and where possible, without resort to litigation. The Parties agree to exclusively utilize the following process to achieve this goal, which shall be undertaken in the following order:

- (a) first, by referring the Dispute to negotiation pursuant to the Negotiation Procedure; and
- (b) in the case of a General Dispute:
 - (i) second, by way of mediation pursuant to the Mediation Procedure; and
 - (ii) third, either:
 - (A) by arbitration pursuant to the Arbitration Procedure where the Parties agree or are deemed to have agreed to arbitration; or
 - (B) by litigation, where the Parties do not agree and are not deemed to have agreed to arbitration pursuant to the Arbitration Procedure; or
- (c) in the case of a Specified Dispute, second by expert determination in accordance with the Expert Determination Procedure.

2.2 **Confidentiality**

- (a) Subject to **Section 2.2(b)**, all Information disclosed by a Party pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure shall be treated as confidential by the Parties and any Mediator, Arbitrator or Independent Expert. Neither the disclosure nor production of Information will represent any waiver of privilege by the disclosing Party. Each Party agrees not to disclose Information provided by the other Party for the purposes hereof to any other Person for any other purpose. Further, such Information shall not be used in any subsequent proceedings without the consent of the Party that disclosed it.

- (b) **Section 2.2(a)** does not prevent a Party from disclosing or using Information not received by it exclusively pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure as and to the extent permitted under the Project NDA.

2.3 Interim Measures

Either Party may apply to a court for interim measures to protect its interest during the period that it is attempting to resolve a Dispute prior to the constitution of a Tribunal, including preliminary injunction or other equitable relief concerning that Dispute. The Parties agree that seeking and obtaining any such interim measure will not waive the Parties' obligation to proceed in accordance with **Section 2.1**.

2.4 Parties to Proceedings

- (a) For the purposes of this Schedule and any Dispute submitted for resolution hereunder, any of Nalcor Energy and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively, and any of Emera Inc. and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively. When applicable, in this Schedule references to a "Party" are to either such collective, and references to the "Parties" are to both such collectives.
- (b) Notwithstanding **Section 2.4(a)**, (i) any Notice given by Nalcor or an Affiliate of Nalcor in connection with this Dispute Resolution Procedure shall be given to Emera Inc., if it is a Party, and to all Affiliates of Emera Inc. that are Parties, and (ii) any Notice given by Emera or an Affiliate of Emera in connection with this Dispute Resolution Procedure shall be given to Nalcor Energy, if it is a Party, and to all Affiliates of Nalcor Energy that are Parties.

2.5 Mediator or Arbitrator as Witness

The Parties agree that any Mediator or Arbitrator appointed hereunder shall not be compelled as a witness in any proceedings for any purpose whatsoever in relation to the Agreement.

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

All Disputes shall be first referred in writing to appropriate representatives of the Parties, as designated by each Party, or in the absence of a Party's specific designation, to the CEO of that Party. References to such representatives hereunder may be initiated at any time by either Party by Notice to the other Party requesting a review under this **Section 3** (a "**Review Notice**"). Each Party shall be afforded a reasonable opportunity to present all relevant Information regarding its position to the other Party's representative. The Parties shall consider the Information provided

and seek to resolve the Dispute through negotiation. Negotiations shall be concluded within 15 Business Days from the date of delivery of the Review Notice or within such extended period as may be agreed in writing by the Parties.

3.2 Reservation of Rights

Except to the extent that such negotiations result in a settlement, such negotiations and exchange of Information will be without prejudice and inadmissible against a Party's interest in any subsequent proceedings and neither Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

3.3 Failure of Negotiations

If the Parties have not resolved the Dispute to the satisfaction of both Parties within 15 Business Days after delivery of the Review Notice, or within such extended period as may be agreed in writing by the Parties, negotiations will be deemed to have failed to resolve the Dispute and either Party may then request that the matter be referred to non-binding mediation pursuant to the Mediation Procedure.

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

- (a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the "**Requesting Party**"), by Notice to the other Party given within five Business Days after expiry of the period set out in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a "**Mediation Notice**") containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.
- (b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.
- (c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:
 - (i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;
 - (ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;

- (iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;
 - (iv) either Party gives Notice to the other Party that it terminates the mediation;
 - (v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;
 - (vi) **Section 4.3(d)** applies; or
 - (vii) the Dispute is settled as provided in **Section 4.4**.
- (d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the “**Mediation Response**”) to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 Appointment of Mediator

Within 10 Business Days after receipt of the Mediation Response by the Requesting Party, the Parties shall attempt to appoint a Mediator to assist the parties in resolving the Dispute. The appointment shall be in writing and signed by the Parties and the Mediator.

4.3 Mediation Process

- (a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.
- (b) The location of the mediation will be St. John’s, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.
- (c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.
- (d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.

- (e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally (or in such other proportions as they may agree), including the costs of or attributable to the Mediator and the facilities used for the mediation.

4.4 Reservation of Rights

Any mediation undertaken hereunder will be non-binding, and except to the extent a settlement is reached, will be considered without prejudice and inadmissible against a Party's interest in any subsequent proceedings and neither Party will be considered to have waived any privilege it may have. No settlement will be considered to have been reached until it is reduced to writing and signed by the Parties.

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

- (a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3**:
 - (i) either Party (the “**Notifying Party**”) may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Party (the “**Notified Party**”) of such submission (an “**Arbitration Notice**”); or
 - (ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, to proceed with resolution of the General Dispute pursuant to **Section 2.1(b)(ii)(B)**.
- (b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.
- (c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.
- (d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.
- (e) Notwithstanding **Sections 5.1(b), 5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.

- (f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by arbitration pursuant to this **Section 5**. The arbitration will be subject to the Arbitration Act and conducted in accordance with the Code, as supplemented and modified by this **Section 5**.

5.2 Provisions Relating to the Arbitration Act and the Code

- (a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.
- (b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.
- (c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the “arbitration agreement”.
- (d) A reference in the Code to “a court or other authority specified in article 6”, will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.
- (e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.
- (f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.
- (g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.
- (h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have both agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.
- (i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 Appointment of Tribunal

- (a) Subject to **Section 5.4**, the arbitration will be heard and determined by three Arbitrators. Each Party shall appoint an Arbitrator of its choice within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration. The Party-appointed Arbitrators shall in turn appoint a third Arbitrator, who shall act as Chair of the Tribunal, within 20 Business Days after the appointment of both Party-

appointed Arbitrators. If the Party-appointed Arbitrators cannot reach agreement on a third Arbitrator, or if a Party fails or refuses to appoint its Party-appointed Arbitrator within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration, the appointment of the Chair of the Tribunal and the third Arbitrator will be made in accordance with Article 11 of the Code.

- (b) Except for the appointment of an Arbitrator pursuant to the Code, the appointment of an Arbitrator must be in writing and accepted in writing by the Arbitrator.

5.4 Arbitration by Single Arbitrator

The arbitration will be heard and determined by one Arbitrator where the Parties agree to arbitration by a single Arbitrator and jointly appoint the Arbitrator within 15 Business Days after the Consent to Arbitration is given or deemed to have been given. If the Parties do not agree to arbitration by a single Arbitrator and appoint the Arbitrator within such time, the arbitration will be heard by three Arbitrators appointed pursuant to **Section 5.3**.

5.5 Procedure

- (a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.
- (b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.
- (c) If the Parties initiate multiple arbitration proceedings under the Agreement and other Formal Agreements, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may, with the written consent of all Parties in all such proceedings, be consolidated into a single arbitration proceeding.
- (d) The Parties may agree as to the manner in which the Tribunal shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing such agreement within 20 Business Days from the date of selection or appointment of the Tribunal, the Tribunal shall promptly and expeditiously conduct the arbitration proceedings in accordance with the Code. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.
- (e) Nothing in this **Section 5** will prevent either Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with the Arbitration Procedure, or to prevent manifestly unfair or unequal treatment of either Party.

- (f) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Schedule or of the Code.

5.6 Awards

- (a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.
- (b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.
- (c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.
- (d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.
- (e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus three percent per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is paid in full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 Settlement

If the Parties settle the Dispute before the Tribunal delivers its written award, the arbitration will be terminated and the Tribunal shall record the terms of settlement in the form of an award made on consent of the Parties.

SECTION 6 – EXPERT DETERMINATION PROCEDURE

6.1 Referral for Expert Determination

Where permitted or required by the Agreement, a Party (the “**Referring Party**”) may by Notice to the other Party (the “**Responding Party**”) require referral of a Specified Dispute to an Independent Expert for determination pursuant to this **Section 6** (the “**Referral Notice**”).

6.2 Qualifications of Independent Expert

Any Independent Expert appointed under this **Section 6** shall be:

- (a) independent of each of the Parties;

- (b) of national or international standing;
- (c) well qualified by education, technical training and experience, and hold the appropriate professional qualifications, to determine the matters in issue in the Specified Dispute; and
- (d) impartial and have no interest or obligation in conflict with the task to be performed as an Independent Expert for the Parties. Without limiting the generality of the foregoing, a conflict will be deemed to exist, unless otherwise agreed in writing by the Parties, if the Independent Expert at any time previously performed work in connection with matters covered by any of the Formal Agreements, or during the preceding three years performed any other work for either of the Parties or any of their Affiliates. Any direct or beneficial equity interest the Independent Expert has in one or more of the Parties or their Affiliates, or *vice versa*, shall be declared by each Party and the Independent Expert prior to the Independent Expert being retained.

6.3 Selection of the Independent Expert

- (a) Within 10 Business Days after delivery of the Referral Notice, each Party shall deliver to the other Party, in a simultaneous exchange, a list of the names of five Persons (ranked 1 - 5 in order of preference, 5 being that Party's first preference) who are acceptable to the Party to act as the Independent Expert. If one Person only is named in both lists, that Person shall be the Independent Expert to determine the Specified Dispute. If more than one Person is named in both lists, the Person with the highest total numerical ranking, determined by adding the rankings from both lists, shall be the Independent Expert to determine the Specified Dispute. In the event of a tie in the rankings, the Person to be the Independent Expert shall be selected by lot from among those of highest equal rank.
- (b) If the Parties fail to select an Independent Expert from the initial lists provided pursuant to **Section 6.3(a)**, the process under **Section 6.3(a)** shall be repeated with a second list of five names from each Party, except that the Parties shall exchange lists within five Business Days after the end of the 10 Business Day period under **Section 6.3(a)**.
- (c) If the Parties fail to select an Independent Expert pursuant to **Section 6.3(a)** or **6.3(b)** or otherwise within 15 Business Days after the Referral Notice is given, within a further period of five Business Days after the end of such 15 day period the Parties shall jointly request the President of ADR Chambers in Toronto, Ontario or his or her designate (the "**Delegate**") to appoint the Independent Expert from a list submitted by the Parties with the request. Each Party may nominate up to three proposed Independent Experts for inclusion on the list. The Parties shall not advise the Delegate which Party nominated a particular nominee. Each Party shall be responsible for one-half of the costs of the Delegate.

6.4 **Terms of Reference**

Once an Independent Expert is selected pursuant to **Section 6.3**, the Parties shall use commercially reasonable efforts to enter into an appropriate engagement agreement with the Independent Expert (the “**Terms of Reference**”) as soon as practicable, and in any event within 20 Business Days, after selection of the Independent Expert pursuant to **Section 6.3**. Failure of the Parties and the Independent Expert to agree upon the Terms of Reference will be deemed to be a General Dispute and the Terms of Reference will be resolved by a single Arbitrator pursuant to the Arbitration Procedure. The date of execution of the Terms of Reference by all of the Parties and the Independent Expert is herein called the “**Appointment Date**”.

6.5 **Information Provided to Independent Expert**

For the purpose of the Expert Determination Procedure, the Parties shall provide to the Independent Expert the following within five Business Days after the Appointment Date:

- (a) a copy of the Agreement, including the Schedules;
- (b) copies of or full access to all documents relevant to the Specified Dispute to be determined by the Independent Expert; and
- (c) other data and reports as may be mutually agreed by the Parties.

6.6 **Dispute Context**

The Independent Expert shall review and analyze, as necessary, the materials provided to it by the Parties pursuant to **Section 6.5**. The Independent Expert shall make its determination pursuant to the Terms of Reference based upon the materials provided by the Parties and in accordance with the Article, Section or Schedule of the Agreement under which the Specified Dispute to be determined arose (the “**Dispute Context**”).

6.7 **No ex parte Communication**

No communication between the Independent Expert and either of the Parties shall be permitted from the Appointment Date until after delivery of the Independent Expert’s final decision except:

- (a) with the approval of both Parties;
- (b) as provided by this **Section 6**; or
- (c) to address strictly administrative matters.

All communications permitted by this **Section 6.7** between either Party and the Independent Expert shall be conducted in writing, with copies sent simultaneously to the other Party in the same manner.

6.8 Initial Meeting and Joint Presentations by the Parties

Within 10 Business Days after the Appointment Date, the Independent Expert and the Parties shall attend an initial informational meeting (the “**Initial Meeting**”) in St. John’s, Newfoundland and Labrador, or at such other location as may be mutually agreed by the Parties, at a time, date and location as determined by the Independent Expert, at which the Parties shall provide an overview of the Specified Dispute to be determined, review the Expert Determination Procedure, and establish a timetable and deadlines for the Independent Expert’s review, all of which are to be consistent with the Agreement.

6.9 Written Submissions and Responses

- (a) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after the Initial Meeting, each Party shall provide to the Independent Expert a written submission (a “**Submission**”) respecting its interpretation and evaluation of the Specified Dispute.
- (b) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after receipt of the other Party’s Submission, each Party shall have the opportunity to provide comments on the other Party’s Submission by written submissions (a “**Response**”) provided to the Independent Expert and the other Party.
- (c) The Parties shall provide any Information deemed necessary by the Independent Expert to complete the evaluation required pursuant to this **Section 6**.
- (d) A Party that fails to submit a Submission or a Response to the Independent Expert within the time allowed by this **Section 6.9** will be deemed to have waived its right to make a Submission or Response, as the case may be.

6.10 Independent Expert Clarifications

- (a) Following receipt of the Submissions and Responses, the Independent Expert may, at its discretion, seek any number of clarifications with respect to any aspect of either Party’s Submission or Response. Such requests for clarifications shall be made by the Independent Expert in writing and the clarifications by the Parties shall be made in writing as requested by the Independent Expert, provided that the other Party shall be provided with a copy of such requests and clarifications.
- (b) The purpose of such clarifications will be to allow the Independent Expert to fully understand the technical and/or financial basis and methodologies used in the preparation of the Submission and Response of each Party, it being understood that each Party’s Submission and Response will be the primary basis upon which the Independent Expert shall make its determination.

- (c) All requests for clarifications and all questions in relation thereto will be initiated or posed exclusively by the Independent Expert to the Party from whom clarification is sought as seen fit by the Independent Expert, in its sole discretion, and free of any interruption or interjection by the other Party. Neither Party will have any right to cross-examine the other Party in respect of such Party's Submission or Response or its responses to the Independent Expert pursuant to this **Section 6.10**.

6.11 Method of Evaluation

- (a) The Independent Expert's assessment shall include the method of evaluation elements set out in the Dispute Context.
- (b) The Independent Expert's assessment, including its economic model, cash flows and analysis, if any, will be made available to the Parties.

6.12 Decision and Presentation of Report

The Independent Expert shall complete its assessment and deliver a written decision of its determination of the Specified Dispute within 40 Business Days after the Independent Expert's receipt of the Responses.

6.13 Costs of Expert Determination

Each Party shall be responsible for one-half of the costs of the Independent Expert. Each Party shall bear its own costs related to the expert determination.

6.14 Effect of Determination

- (a) The Independent Expert's determination pursuant to this **Section 6** will be final and binding upon the Parties and not reviewable by a court for any reason whatsoever.
- (b) The Independent Expert is not an arbitrator of the Specified Dispute and is deemed not to be acting in an arbitral capacity. The Independent Expert's determination pursuant to this **Section 6** is not an arbitration under the Arbitration Act or any other federal or provincial legislation.

6.15 Settlement

If the Parties settle the Specified Dispute before the Independent Expert delivers its written decision, the expert determination will be terminated and the Independent Expert shall record the settlement in the form of a consent decision of the Parties.

**Appendix A
to Dispute Resolution Procedure**

COMMERCIAL ARBITRATION CODE

Appendix A

COMMERCIAL ARBITRATION CODE

(Based on the Model Law on International Commercial Arbitration as adopted by the United Nations Commission on International Trade Law on June 21, 1985)

Note: The word “international”, which appears in paragraph (1) of article 1 of the Model Law, has been deleted from paragraph (1) of article 1 below. Paragraphs (3) and (4) of article 1, which contain a description of when arbitration is international, are deleted. Paragraph (5) appears as paragraph (3).

Any additions or substitutions to the Model Law are indicated by the use of italics.

Except as otherwise indicated, the material that follows reproduces exactly the Model Law.

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

- (1) This Code applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.
- (2) The provisions of this Code, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.
- (3) This Code shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Code.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this Code:

- (a) “arbitration” means any arbitration whether or not administered by a permanent arbitral institution;
- (b) “arbitral tribunal” means a sole arbitrator or a panel of arbitrators;
- (c) “court” means a body or organ of the judicial system of a State;
- (d) where a provision of this Code, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Code refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Code, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
- (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

A party who knows that any provision of this *Code* from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object.

ARTICLE 5
EXTENT OF COURT INTERVENTION

In matters governed by this *Code*, no court shall intervene except where so provided in this *Code*.

ARTICLE 6
COURT OR OTHER AUTHORITY FOR CERTAIN FUNCTIONS OF ARBITRATION ASSISTANCE AND SUPERVISION

The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by *the Federal Court or any superior, county or district court*.

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.

(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court.

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

It is not incompatible with an arbitration agreement for a party to request, before or during arbitral proceedings, from a court an interim measure of protection and for a court to grant such measure.

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

- (1) The parties are free to determine the number of arbitrators.
- (2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(c) a party fails to act as required under such procedure, or

(d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(e) a third party, including an institution, fails to perform any function entrusted to it under such procedure, any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

(5) A decision on a matter entrusted by paragraph (3) or (4) of this article to the court or other authority specified in article 6 shall be subject to no appeal. The court or other authority, in appointing an arbitrator, shall have due regard to any qualifications required of the arbitrator by the agreement of the parties and to such considerations as are likely to secure the appointment of an independent and impartial arbitrator and, in the case of a sole or third arbitrator, shall take into account as well the advisability of appointing an arbitrator of a nationality other than those of the parties.

ARTICLE 12 GROUNDS FOR CHALLENGE

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him.

(2) An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, or if he does not possess qualifications agreed to by the parties. A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

ARTICLE 13 CHALLENGE PROCEDURE

(1) The parties are free to agree on a procedure for challenging an arbitrator, subject to the provisions of paragraph (3) of this article.

(2) Failing such agreement, a party who intends to challenge an arbitrator shall, within fifteen days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstances referred to in article 12(2), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws from his office or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(3) If a challenge under any procedure agreed upon by the parties or under the procedure of paragraph (2) of this article is not successful, the challenging party may request, within thirty days after having received notice of the decision rejecting the challenge, the court or other authority specified in article 6 to decide on the challenge, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue the arbitral proceedings and make an award.

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

(1) If an arbitrator becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay, his mandate terminates if he withdraws from his office or if the parties agree on the termination. Otherwise, if a controversy remains concerning any of these grounds, any party may request the court or other authority specified in article 6 to decide on the termination of the mandate, which decision shall be subject to no appeal.

(2) If, under this article or article 13(2), an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, this does not imply acceptance of the validity of any ground referred to in this article or article 12 (2).

ARTICLE 15 APPOINTMENT OF SUBSTITUTE ARBITRATOR

Where the mandate of an arbitrator terminates under article 13 or 14 or because of his withdrawal from office for any other reason or because of the revocation of his mandate by agreement of the parties or in any other case of termination of his mandate, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16 COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

(1) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail *ipso jure* the invalidity of the arbitration clause.

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence. A party is not precluded from raising such a plea by the fact that he has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified.

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17 POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18 EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

- (1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 20
PLACE OF ARBITRATION

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

ARTICLE 22
LANGUAGE

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

ARTICLE 25
DEFAULT OF A PARTY

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of *Canada* assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

ARTICLE 29

DECISION-MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

ARTICLE 30

SETTLEMENT

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31

FORM AND CONTENTS OF AWARD

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

ARTICLE 32 TERMINATION OF PROCEEDINGS

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33 CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
 - (a) the party making the application furnishes proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of *Canada*; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code*; or
 - (b) the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or
 - (ii) the award is in conflict with the public policy of *Canada*.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of *Canada*, the party shall supply a duly certified translation thereof into such language.

ARTICLE 36 GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of *Canada*.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

ENERGY AND CAPACITY AGREEMENT

SCHEDULE 7

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF [NAME OF] AGREEMENT

[NTD: Form to be amended as required if only a portion of the Assignor's interest in the Assigned Agreement is being transferred to the Assignee, including appropriate amendments to Sections 2.1, 2.2 and 2.3.]

THIS ASSIGNMENT AGREEMENT is made effective the ● day of ●, 20__ ("**Effective Date**")

AMONG:

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown ("**Nalcor**")

- or -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia ("**Emera**")

- and -

AFFILIATE of NALCOR or EMERA, a [type of entity and jurisdiction or statute of incorporation or formation] ("**Assignee**")

- and -

EMERA INC., a company incorporated under the laws of the Province of Nova Scotia ("**Emera**")

- or -

NALCOR ENERGY, a body corporate existing pursuant to the *Energy Corporation Act* being chapter E-11.01 of the *Statutes of Newfoundland and Labrador, 2007*, solely in its own right and not as agent of the NL Crown ("**Nalcor**")

[NTD: Need to add Affiliate of Nalcor or Emera, as applicable, as party in event of prior assignments.]

WHEREAS:

- A. Nalcor Energy and Emera Inc. have entered into a Term Sheet dated November 18, 2010 (the "**Term Sheet**") confirming their common understanding of the purpose, process and timing for the supply and delivery of power and energy from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England;

- B. Nalcor and Emera entered into a _____ Agreement on _____, 2012 (the “Assigned Agreement”) [NTD: Need to add any required references to other assigned rights];

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 **INTERPRETATION**

1.1 **Definitions**

In this Agreement, including the recitals:

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person, provided however that the NL Crown shall be deemed not to be an affiliate of Nalcor;

“**Agreement**” means this agreement, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

“**Applicable Law**” means, in relation to any Person, property, transaction or event, all applicable laws, statutes, rules, codes, regulations, treaties, official directives, policies and orders of and the terms of all judgments, orders and decrees issued by any Authorized Authority by which such Person is bound or having application to the property, transaction or event in question;

“**Assigned Agreement**” has the meaning set forth in the recitals;

“**Assignee**” means _____, an Affiliate of the Assignor;

“**Assignor**” means [Nalcor/Emera or an Affiliate of Nalcor/Emera, as applicable];

“**Authorized Authority**” means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

“**Business Day**” means any day that is not a Saturday, Sunday or legal holiday recognized in the City of St. John’s, NL, or in Halifax Regional Municipality, NS;

“Consenting Party” means [Nalcor/Emera or, if applicable as a result of prior assignments, specified Affiliates];

“Control” of a Person means the possession, direct or indirect, of the power to elect or appoint a majority of such Person’s board of directors or similar governing body, or to direct or cause the direction of the management, business and/or policies of such Person, whether through ownership of Voting Shares, by contract or otherwise, and, without limiting the generality of the foregoing, a Person shall be deemed to **“Control”** any partnership of which, at the time, the Person is a general partner, in the case of a limited partnership, or is a partner who, under the partnership agreement, has authority to bind the partnership, in all other cases (and the terms **“Controlled by”** and **“under common Control with”** have correlative meanings);

“Dispute Resolution Procedure” has the meaning set forth in **Section 4.1(a)**;

“Effective Date” has the meaning set forth in the commencement of this Agreement;

“Emera” has the meaning set forth in the preamble to this Agreement and includes Emera’s successors and permitted assigns;

“Excise Tax Act” means the *Excise Tax Act* (Canada);

“HST” means all amounts exigible pursuant to Part IX of the Excise Tax Act, including, for greater certainty, the Taxes commonly referred to as the goods and services tax (GST) and the harmonized sales tax (HST);

“Income Tax Act” means the *Income Tax Act* (Canada);

“Insolvency Event” means, in relation to any Party, the occurrence of one or more of the following:

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an

assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

“Knowledge” means in the case of a Party, as applicable, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

“Legal Proceedings” means any actions, suits, investigations, proceedings, judgments, rulings or orders by or before any Authorized Authority;

“NL Crown” means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

“Nalcor” has the meaning set forth in the preamble to this Agreement and includes Nalcor’s successors and permitted assigns;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

“Parties” means the parties to this Agreement, and **“Party”** means one of them;

“Person” includes an individual, a partnership, a corporation, a company, a trust, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof and the heirs, executors, administrators or other legal representatives of an individual;

“Regular Business Hours” means 8:30 a.m. through 4:30 p.m. local time on Business Days in St. John’s, NL, when referring to the Regular Business Hours of Nalcor, and 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS, when referring to the Regular Business Hours of Emera;

“Regulatory Approval” means any approval required by any Authorized Authority, including any regulatory, environmental, development, zoning, building, subdivision or occupancy permit, licence, approval or other authorization;

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than a tariff or fees in respect of electricity transmission services) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

“Term Sheet” has the meaning set forth in the preamble to this Agreement;

“third party” means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party; and

“Voting Shares” means shares issued by a corporation in its capital stock, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or Persons performing similar functions) of such Person, even if such right to vote has been suspended by the happening of such contingency.

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the

construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**” or “**Section**” followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.

- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

ARTICLE 2 ASSIGNMENT

2.1 Assignment to Affiliate

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Agreement and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Agreement and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Agreement as of the Effective Date and covenants and agrees with the Assignor and the Consenting Party to assume the covenants and obligations of the Assignor under the Assigned Agreement. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Agreement arising on and in respect of matters occurring after the Effective Date.

2.3 Limitations on Assignment / Assumption

The Assignor reserves to itself and does not assign to the Assignee, and the Assignee does not assume from the Assignor the following rights and/or obligations:

(a)

(b)

2.4 Confirmation of Status of Assigned Agreement

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Party is in default of any of its obligations under the Assigned Agreement. The Consenting Party hereby confirms to the Assignee that neither it nor, to its Knowledge, the Assignor is in default of any of its obligations under the Assigned Agreement.

2.5 Assignor to Remain Liable

Notwithstanding the foregoing, [Nalcor/Emera] expressly acknowledges and agrees that it shall remain liable to the Consenting Party as a primary obligor under the Assigned Agreement to observe and perform all of the conditions and obligations in the Assigned Agreement which the Assignor, and as of the Effective Date the Assignee, are bound to observe and perform.

2.6 [Nalcor/Emera] Defaults

The Assignee shall be in default of the Assigned Agreement if at any time:

- (a) [Nalcor/Emera] ceases to carry on all or substantially all of its business or, except as permitted under the Assigned Agreement, transfers all or substantially all of its undertaking and assets; or
- (b) an Insolvency Event occurs with respect to [Nalcor/Emera].

2.7 Acknowledgement of Consenting Party

The Consenting Party acknowledges, consents to and accepts the within assignment and assumption of the Assigned Agreement, subject to the terms and conditions herein and confirms to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Agreement.

2.8 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes – Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and
 - (ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.10**.

2.9 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.9(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.10 Invoicing

All invoices issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

2.11 Payment and Offset

- (a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.12 HST Registration Status

- (a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

- (b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

2.13 [●]

[Insert any provision required by the Assigned Agreement to be included.]

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1 Assignor and Assignee Representations and Warranties

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to the Consenting Party that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary [corporate] action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;
- (d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;
- (e) there are [no Legal Proceedings **NTD: or set out Legal Proceedings, if any**] pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and [**NTD: set out any required Regulatory Approvals**];

- (g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and
- (h) the Assignee is an Affiliate of the Assignor.

ARTICLE 4 DISPUTE RESOLUTION PROCEDURE

4.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule “[]” to the Assigned Agreement (the “**Dispute Resolution Procedure**”).
- (b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Assigned Agreement]**

ARTICLE 5 MISCELLANEOUS PROVISIONS

5.1 Notices

Notices, where required herein, shall be in writing and shall be sufficiently given if delivered personally or by courier or sent by electronic mail or facsimile transmission, directed as follows:

To Assignor:

[●]

To Assignee:

[●]

To Consenting Party:

[●]

[To Nalcor/Emera:]

[●]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and be confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the

Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Any Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

5.3 Counterparts

This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Signatures delivered by facsimile or electronic mail shall be deemed for all purposes to be original counterparts of this Agreement.

5.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

5.5 Announcements

No announcement with respect to this Agreement shall be made by any Party without the prior approval of the other Parties. The foregoing shall not apply to any announcement by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Parties before making any such announcement and gives due consideration to the views of the other Parties with respect thereto. The Parties shall use reasonable efforts to agree on the text of any proposed announcement.

5.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, this Agreement shall not be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of the other Parties for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of the other Parties.

5.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

5.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

No amendment or modification to this Agreement shall be effective unless it is in writing and signed by all Parties.

5.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of a Party receiving such consent or approval.

5.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as

the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure; (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

5.15 Successors and Assigns

This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

5.16 [Capacity of Nalcor

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown. **NTD: Include if Nalcor signing Agreement.]**

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

Assignor

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

Assignee

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

Consenting Party

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

**[NTD: Need to add Nalcor or Emera, as applicable, in
event of prior assignments]**

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-27:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 23

NSPML refers at several points in the application to the impact of the FLG2 which changed NSPML's capital structure to about 78/22 debt to equity. NSPML submits that this places it at higher risk:

- Page 19, lines 13-19 – “As mentioned in NSPML’s recent capital application [Cable Protection Project (M12285)], NSPML does not currently have debt financing in place and is in the process of determining its best financing options given its ~78/22 capital structure and that any additional debt is subordinated to Canada pursuant to the terms of FLG1 and FLG2. At this time, it is expected that NSPML will have higher financing costs than NS Power”.
- Page 23, lines 20-22 – “Lastly, at 70 percent debt and 30 percent equity, NSPML carries a higher risk capital structure as compared to typical T&D utilities. This has been further accentuated since the addition of FLG2 which put NSPML’s capital structure at ~78/22”.
- Page 25, lines 22-24 – “After FLG2 was put into place, the debt-to-equity ratio for NSPML was reduced to approximately 78 percent debt and 22 percent equity, resulting in the financial risk for NSPML being significantly higher than other regulated entities”.
- Appendix A (Concentric), page 58, lines 1-12 – “Additionally, an incremental \$500 million in debt (backed by GOC guarantee) was issued in December 2024 at 4.04%. The proceeds were used to finance the amount owed by customers to NS Power for the deferred FAM balance. As a result, NSPML now has an actual equity ratio of approximately 78% debt / 22% equity. Although the additional debt is separated from a regulated capital structure basis, this debt and additional balance sheet

NON-CONFIDENTIAL

1 leverage would be considered by creditors as debt obligations of NSPML. As
2 explained in Section 2 of our report, there is a relationship between the capital
3 structure and the authorized ROE. That is, other factors being equal, firms with
4 lower common equity ratios require higher rates of return to compensate
5 shareholders for the additional financial risks (i.e., impact of financial leverage on
6 credit metrics and credit rating, financial institutions having first right over earnings
7 to repay debt obligations, and the impact of any potential disallowances).
8 Consequently, when a regulator approves a capital structure, that decision impacts
9 the required rate of return on common equity.”
10

11 At paragraph 80 of the Board’s decision in Matters M11791 & M11902, 2024 NSUARB 199,
12 in approving the Supplemental Assessment Application respecting the FLG2, the Board
13 noted – “Further, NSPML noted that issuance of the new \$500 million bond debt will not
14 have an impact on NSPML’s credit rating or risk profile. In response to Information
15 Requests from Board staff, NSPML confirmed that taking on this new debt would have no
16 impact on its ROE or its ability to finance future capital projects”.
17

18 a) Please confirm, or explain otherwise, that in response to Board staff IR-16(d) in
19 M11902 (Exhibit N-12) asking about the impact on NSPML’s required ROE after the
20 \$500 million new debt is incurred, NSPML stated “There is no impact on NSPML’s
21 required ROE”.

22 b) Please confirm, or explain otherwise, that in response to Board staff IR-19(b) in
23 M11902 (Exhibit N-12) NSPML stated: “The new \$500 million of debt under the
24 FLG2 is not expected to impact NSPML’s credit rating or risk profile and is therefore
25 not expected to limit the ability for future debt financing related to sustaining capital.
26 NSPML’s future debt financing will be based on a number of items, including its
27 ability to maintain current FLG debt covenants, the fact that it is a regulated cost of
28 service utility, the strength of its major creditor (NS Power), and the strength of

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **NSPML’s balance sheet. Actual factors will be known at the time when future**
2 **borrowings are pursued.”**

3 **c) Please confirm whether it is still NSPML’s view that the FLG2 transaction did not**
4 **have a negative impact on NSPML. If not, why not?**

5 **d) Please confirm whether the Board should rely on NSPML’s representations in the**
6 **decision about the FLG2 to deny NSPML’s request for a change in its capital**
7 **structure and ignore that issue’s impact on the ROE analysis. If not, why not?**
8

9 Response IR-27:

10
11 a) Confirmed, there is no impact on NSPML’s ROE as a result of the \$500 million FLG2.
12

13 b) Confirmed. NSPML’s creditworthiness remained unchanged as a result of FLG2.
14 Additional Debt is subordinated to Canada and as NSPML is not a rated entity, lenders
15 would continue to view additional debt as more costly because of the subordination. These
16 are the factors that lenders have focussed on, in addition to NSPML being a regulated entity
17 and being part of the Emera group of companies – both aspects being viewed positively.
18

19 c) Confirmed. See response in (b).
20

21 d) NSPML is requesting a change in it’s regulated capital structure¹. The primary reasons for
22 NSPML’s request for a 60 percent debt and 40 percent equity balance for sustaining capital
23 relates to (i) it migrating NSPML’s capital structure for capital investments that are not
24 subject to federal loan guarantees closer to 37%- 54.4% as noted in Concentric’s evidence
25 relating to the T&D Proxy group, (ii) to strengthen the non-FLG portion of the NSPML’s
26 balance sheet, and (iii) to more closely harmonize NSPML’s and NSP’s balance sheets to
27 maintain strong credit profiles for both entities.

¹ NSPML 2026 Assessment Application, page 29, line 10.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-28:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 23

NSPML states: “In addition, the ML delivers energy from Newfoundland to Nova Scotia via two 170km subsea cables that, themselves, result in increased operational risks and complexity due to them being undersea at significant and varying water depths, in addition to the exposure of extreme environmental conditions.”

a) Please confirm that the “increased operational risks and complexity” (as asserted by NSPML) for the cables are mitigated by increased NSPML O&M cost projections (including marine survey costs) and sustaining capital cost projections as compared to traditional HVAC assets and substations.

i. If not confirmed, please explain.

b) In its application for approval in Matter M12285 (capital approval application for submarine cable protection), NSPML’s expert, Mr. James Hunt, stated on page 8 of his evidence: “The Maritime Link meets its design requirements as demonstrated by the low overall external probabilistic risk assessment established in the most recent Cable Integrity Risk Assessment for the Maritime Link.” Further, in response to NSEB IR-29 in Matter M12285, NSPML filed Attachment 1 which provides a cover memo to context the current Maritime Link submarine cable probabilistic risk assessment reflecting anchoring, fishing and sea-ice risk. The memo is dated July 23, 2025. The memo notes that Mean Time to Failure (MTTF) for the cables resulting from sea-ice risk (which the memo notes is the highest source of risk to the cables) ranges between 6,904 years and 8,366 years. The memo also notes that the probabilistic risk return period associated with anchor risk remains greater than 30,000 years, and that the probabilistic risk return period for fishing risk is in excess of 1,000,000 years. Please compare these MTTF’s and risk return periods to those of typical HVAC transmission lines.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Response IR-28:

a) Please refer to NSEB IR-025.

In addition to its AC yards, HVDC converter stations, 190 kms of HVDC overhead transmission, 160 kms of HVAC transmission, grounding lines and grounding sites, Maritime Link has the following facilities to interface from its HVDC overhead system to its submarine cable system:

- Transition station in Cape Ray, NL where cables transition from overhead to buried land cables
- Roughly 2km of buried land cables (2 x 2 kms) in NL
- A Horizontal Direct Drilling (HDD) site in Cape Ray (NL), where buried land cables transition to submarine cables and enters to the HDD protective casings
- Roughly 2 x 170 kms of separated HVDC submarine cables across the Cabot Strait, complete with protection system in a highly dynamic ocean environment consisting of rock berms, and trenches
- A HDD site in Point Aconi (NS), where submarine cables enter the HDD protective casings and exit on land where they transition to buried land cables
- Roughly 2 x 700 m of buried land cable in NS between the HDD pad and transition station
- Transition station in Point Aconi (NS), where buried land cables transition to overhead

The mitigations incorporated in Maritime Link's design, as well as ongoing operational practices to reduce probability of a significant external event from occurring does not result in zero risk. Inspections of the submarine cables are critical in assessing the cables

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 conditions which in turn help assess risk and determine if remediation activities are
2 required, but inspections by themselves do not contribute directly to mitigate risk.

3
4 These inspections require a great deal of planning, specialized survey equipment and
5 personnel as well as marine vessels and remotely operated vehicles that are suitable for sea
6 states of the Cabot Strait in order to execute safely. Notwithstanding, at times, survey
7 operations have to be paused or stopped where sea states affect data quality or when it's
8 simply unsafe to perform survey operations. [REDACTED]

9 [REDACTED]
10 [REDACTED]

11
12 The major HVDC submarine cable manufacturers worldwide are Nexans, NKT and
13 Prysmian, along with others that supply Asian markets. There are two main cable insulation
14 technologies of submarine cables: Mass-Impregnated (MI) and Cross-Linked Polyethylene
15 (XLPE). Although MI accounts for a large number of installed cables, the emerging trend
16 is to the XLPE technology. The Maritime Link employs Nexans' MI submarine cables
17 designed for operating requirements and installation parameters specific to Maritime Link.

18
19 Should a cable fault occur, the cost, duration and complexity of a repair would be
20 significant. Cable design and jointing procedures are proprietary to the Original Equipment
21 Manufacturer, and a repair would require engagement of the OEM and its qualified jointing
22 personnel. The availability of qualified jointing personnel for MI cables is anticipated to
23 become more challenging over time given the trending popularity of XLPE cables.
24 Additionally, equipment required to perform a repair offshore is highly specialized and in
25 limited supply. Submarine cable repair planning, engineering and operations are highly
26 complex and also require specific expertise.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 The Maritime Link submarine cables, compared to more traditional HVAC assets, have a
2 more unique design, and are more complex to inspect, maintain and repair, any intervention
3 will be inherently more complicated and more costly as is the case with any operations or
4 asset situated in the offshore marine environment.

5
6 b) NSPML does not have “MTTF’s and risk return periods for typical HVAC transmission
7 lines” to provide the quantitative comparison requested.

8
9 NSPML can advise however, that availability risks are informed by both failure risk and
10 repair risk profiles:

- 11 • While the external submarine cable risks assessed in the Cable Integrity Risk
12 Assessment referenced are characterized as low or low-medium, this does not present
13 a complete risk profile as not all of the submarine cable risks are able to be numerically
14 assessed as in the probabilistic risk assessment. For instance, a cable failure may result
15 from internal factors (e.g. latent defect during manufacturing, damage caused during
16 installation or other leading to failure over time) as considered in M10206; for an
17 overall failure rate of the Maritime Link submarine cables, the Board directed NSPML
18 to adopt an industry failure rate of 1 failure every 10 years for contingency planning
19 purposes.¹
- 20 • Furthermore, in the event of a cable failure, duration and complexity of a cable repair
21 would be significant for reasons as stated in a) above.

¹ M10206, Decision, paragraphs 77-78.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-29:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

- a) Please describe the guarantee provisions of the FLG and FLG2.**
- b) Excluding risk associated with capital structure, please explain how these provisions impact NSPML's financial risk.**

Response IR-29:

- a) Please see summary of guarantee provisions below as it pertains to FLG and FLG2, as per section 12.2.5 of the Amended and Re-Styled ML Credit Agreement:
 - i. Any Additional Debt that is secured by Liens on any of the Assets of the Borrower must be expressly subordinated to the Liens under the ML Security Documents in favour of the Collateral Agent.
 - ii. After incurring Additional Debt, no ML Event of Default can exist.
 - iii. The Prospective DSCR cannot be less than 1.30 and DER cannot be greater than 80%
 - iv. The servicing of the Additional Debt is provided for by ML Project Revenue in accordance with the waterfall under section 8.1.2.2 (being the tenth item listed in the revenue waterfall).
- b) These provisions do not directly impact NSPML's financial risk. However, as stated in a. above, any Additional Debt is subordinated to the Liens under the ML Security Documents in favour of the Collateral Agent. Any new debt lender will be subordinated to Canada and therefore adds to the lender's view of NSPML as higher cost borrowing for additional debt.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-30:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 26

NSPML states: “NSPML is requesting that the Board grant flexibility in NSPML’s equity thickness using a range of +/-1.5 percent which results in a range of 28.5-31.5 percent equity and 68.5-71.5 percent debt on NSPML’s original project capital.”

a) Please confirm that NSPML intends to calculate its average annual equity thickness, if this band was approved, using the actual equity thickness at the end of each quarter for five quarters.

b) NSPML’s response to Board IR-18 in M10057 (NSPML Audited Financial Statements for 2018, 2019, and 2020) stated: “The terms of the Federal Loan Guarantee require NSPML to maintain a *minimum* equity thickness of 30%”. Given this requirement, why is NSPML asking for flexibility ranging to 28.5%?

Response IR-030:

a) Confirmed.

b) NSPML is requesting equity thickness flexibility on it’s regulated equity thickness, the requirements for the Federal Loan Guarantee is based on its legal equity thickness, which is based on the Annual Audited Financial Statements under US GAAP. As part of the Amended and Restated ML Credit agreement, NSPML is to maintain a legal capital structure of 80/20. While NSPML aims to manage to 30% regulated equity, the range was requested to encompass balance in the request from a regulated perspective.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

Request IR-31:

IR-2 to IR-31 Reference Exhibit N-1 Pages 4 -29

Page 28

NSPML states: “In the 2025 Assessment Decision, the Board directed NSPML to file its Asset Management Plan as part of its 2026 Assessment Application. Please see partially confidential Attachment 2 for NSPML’s 10-year Asset Management Outlook.” Board staff notes that the Board’s direction in its 2025 Assessment Decision was for NSPML to file its Long-Term Asset Management Plan (LTAMP) by June 30, 2025.

a) Does NSPML consider Attachment 2 - NSPML’s 10-year Asset Management Outlook it filed in the current proceeding to be its LTAMP?

i. If not, please explain why NSPML has not filed its LTAMP per the Board’s direction.

ii. If so, please explain why it has taken almost 4 years to prepare the 12-page document.

iii. What is the significance of naming Attachment 2 as “NSPML’s Asset Management Outlook” instead of “Long-Term Asset Management Plan”?

iv. Given the nature of the commercial agreements with Nalcor and the fact that the Maritime Link is to be transferred to Nalcor at the end of a 35-year term, why is the Asset Management Outlook/LTAMP focused on a 10-year outlook rather than a review of the full term of the Maritime Link when it is owned and operated by NSPML?

b) Board staff notes that NSPML’s LTAMP is intended to identify and document appropriate asset management strategies and techniques to adequately maintain NSPML’s assets over the long-term. The LTAMP is specifically defined in the “Nalcor Energy and Emera Inc. Amended and Restated Joint Operations Agreement”:

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 **“Long Term Asset Management Plan” or “LTAMP” means, for each of the Defined Assets,**
2 **a plan describing and quantifying the O&M Activities, in the case of the Transmission Assets,**
3 **or the MFP Operating and Maintenance Activities, in the case of the MFP, for the Defined**
4 **Asset for each year of its Initial Service Life in sufficient detail to determine the estimated**
5 **annual Operating and Maintenance Costs, including:**

6 **(a) a description of each activity, including at a minimum routine annual O&M Activities**
7 **and major asset component inspections, overhauls, retirements and replacements which do**
8 **not occur annually; and**

9 **(b) the expected year of the occurrence of each such activity;”**

10 **Please explain how Attachment 2 meets this definition of the LTAMP.**

11 **c) Please identify the costs incurred to date by NSPML to prepare the LTAMP.**

12 **i. For each of 2021, 2022, 2023, 2024, 2025 and 2026 please identify the**
13 **cost included in NSPML’s related cost assessment associated with**
14 **preparing the LTAMP.**

15 **ii. For each of 2021, 2022, 2023, and 2024 please identify the actual cost**
16 **incurred by NSPML to prepare the LTAMP.**

17
18 Response IR-31:
19

20 a) i. – iv. The Asset Management Outlook filed by NSPML is a subset of the Company’s
21 asset management plans which was created for regulatory purposes. In filing the Outlook,
22 NSPML was attempting to balance the requirement for disclosure to the Board and
23 intervenors to inform this regulatory process while maintaining privilege on significant
24 amounts of information that are part of a separate, but interrelated, commercial negotiation
25 process as described in the response to NSEB IR-06(a) - a process that will be brought in
26 full before the Nova Scotia Energy Board for review upon completion.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 In referencing LTAMP in its prior assessment applications, NSPML was primarily
2 referencing its own long term asset management plans and not the commercial exercise
3 that involves, among other things, NLH's asset management plan. It was also primarily
4 referenced in the context of assessing the practicality of moving towards a multi-year
5 assessment. Providing the Outlook at this time was attempting to balance the need for
6 disclosure to interested parties and ultimately to support the Board's determination in this
7 process, while trying to avoid harming ongoing commercial negotiations.

8
9 NSPML recognizes the confusion of utilizing the same or similar terminology. Based on
10 the questions from the Board in this regard, NSPML likely could have brought more
11 attention to this distinction in earlier communications.

12
13 NSPML titled this document an "Outlook" to differentiate it from the In-Service LTAMP
14 and related documents and estimates, which are prepared for a different purpose. In
15 preparing its Outlook, NSPML reviewed NS Power's 10-year system outlook report, its
16 five-year reliability plan, and its ACE Plan. NSPML settled on providing a 10-year view
17 as this was the longest time horizon associated with these filings by NS Power (short of
18 an Integrated Resource Plan).

19
20 b) The Asset Management Outlook is not intended to be the In-Service LTAMP required
21 under section 5.2 of the JOA and does not meet the requirements of, nor was it intended to
22 be, the document defined by the JOA as the "Long Term Asset Management Plan".

23
24 c) Since 2018, NSPML has spent approximately [REDACTED] in legal and consulting costs partially¹
25 or fully related to the LTAMP commercial matter with NLH and has included [REDACTED] in the
26 2026 assessment. A reconciliation of external costs can be completed once commercial
27 matters are finalized. NSPML does not have its employees allocate (track) internal labour

¹ The reference to "partially" is that material portions of work carried out in furtherance of the commercial LTAMP are also required for management of the Maritime Link assets (and vice versa).

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

REDACTED

1 efforts in relation to it's JOA obligations, whether operational, commercial or compliance
2 related.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-32:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

Page 6 states “The above three risks differentiate NSPML from the average T&D utility.”

a) Please discuss risks related to the average T&D utility that are higher than for NSPML; for example, NSPML’s revenue is based on annual assessments that it recovers from a single party over equal monthly installments, rather than from multiple customers and subject to load forecast variances due to weather, changing customer load shapes and demand, etc.

b) How does this risk compare to European utilities with subsea transmission cables?

Response IR-32:

a) From the perspective of equity and debt investors, the most important risk that distinguishes NSPML from the average electric T&D utility is the physical risk associated with owning and operating subsea cables. Section 7 of Concentric’s report discusses the most important business and operating risks for NSPML. As summarized in our report, the operational risk for subsea cables is higher than for overhead transmission lines due to environmental conditions and the challenge of performing repairs and maintenance. In particular, submarine cables are subject to a range of physical security risks due to their underwater placement and extensive geographical coverage. These risks include accidental damage from ship anchors or fishing activity, intentional sabotage, and natural disasters such as earthquakes and undersea landslides, and specialized supply chain constraints.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 Concentric agrees that many electric transmission companies recover their revenue
2 requirement from a small number of customers that make equal monthly payments. This
3 method of recovering the revenue requirement is not unique to NSPML and does not affect
4 its relative risk profile.

5
6 b) Concentric did not compare the risk of NSPML to European utilities with subsea
7 transmission cables for the reasons explained in our response to NSEB IR-24.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-33:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

Pages 12 to 15 Macroeconomic Conditions 1. Canada

In the Cost of Capital Report provided in M10431 Nova Scotia Power General Rate Application, Concentric's evidence supporting a ROE of 10.1% cited economic contraction in the second quarter of 2021 at an annualised rate of 1.1% "raising doubts about the strength of the economic recovery." Whereas the analysis of Canada's GDP in this application cites growth from Q2 2024 into 2025. Given the improved economic conditions cited, why does Concentric not consider a lower ROE more appropriate?

Response IR-33:

Figure 1 of our report for NSPML shows that the average results for our North American electric T&D proxy group are 9.34%. As explained on pages 58-59, Concentric then adds a risk premium of 75 to 100 basis points to the base ROE to arrive at our recommendation for NSPML of 10.1% to 10.35%. Section 3 of our report discusses the current and expected economic conditions in Canada and the U.S., including GDP growth, inflation, unemployment, and interest rates on government and utility bonds. Concentric's ROE analysis is based on projected GDP growth in the Multi-Stage discounted cash flow model and forecast interest rates in the capital asset pricing model and the risk premium model. This market data has changed since Concentric performed its analysis of the cost of equity for Nova Scotia Power referenced in the question. The key difference between 2021 and today is that interest rates on government bonds have increased from very low levels due to inflationary pressure in both Canada and the U.S. following the COVID-19 pandemic. As a result, the cost of capital for all companies including electric utilities has increased, which supports a higher authorized ROE for NSPML than was approved for NS Power in February 2023.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-34:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

Page 19 cites the Bank of Canada April 2025 Monetary Policy Report, since then the Bank of Canada has released the July 2025 Monetary Report. The July report notes that since April, the risk of a severe trade conflict is lower and there is a better understanding about what the tariffs could be. Additionally, the July Report indicates that CPI was 1.9% in June, economic growth in the first quarter was stronger than expected and short-term business expectations have moderated. Based on the July MPR please identify where revisions could be made to any assumptions applied in the models.

Response IR-34:

The model assumptions do not depend directly on the Bank of Canada's Monetary Policy Report. Section 3 of Concentric's report is intended to provide an overview of current economic conditions and how central bankers may respond to key indicators such as inflation and unemployment in setting monetary policy, which affects short-term interest rates. The cost of capital, however, is tied more closely to long-term government bond yields, which represent the risk-free rate available to investors.

The July update is not materially different than the April Monetary Policy Report and would not result in any revisions to any assumptions in Concentric's models. We note that the Bank of Canada continues to emphasize that trade policy has raised uncertainty for the Canadian economy and that inflation remains a concern. This was confirmed when Canada reported a CPI Trim-mean of 3.0% in July 2025, the third consecutive month at that level, and well above the Bank of

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 Canada's target of 2.0%. Concentric has updated pages 19-20 of our report to reflect the most
2 recent information from the Bank of Canada.

3
4 The overnight rate was reduced by the Bank of Canada five times in 2024 to 3.25 percent, and rate
5 currently stands at 2.75 percent. In announcing its decision to maintain the overnight rate in July
6 2025, the BOC stated:

7 *With still high uncertainty, the Canadian economy showing some resilience, and*
8 *ongoing pressures on underlying inflation, Governing Council decided to hold the*
9 *policy interest rate unchanged. We will continue to assess the timing and strength*
10 *of both the downward pressures on inflation from a weaker economy and the*
11 *upward pressures on inflation from higher costs related to tariffs and the*
12 *reconfiguration of trade. If a weakening economy puts further downward pressure*
13 *on inflation and the upward price pressures from the trade disruptions are*
14 *contained, there may be a need for a reduction in the policy interest rate.*

15 *Governing Council is proceeding carefully, with particular attention to the risks*
16 *and uncertainties facing the Canadian economy. These include: the extent to which*
17 *higher US tariffs reduce demand for Canadian exports; how much this spills over*
18 *into business investment, employment and household spending; how much and how*
19 *quickly cost increases from tariffs and trade disruptions are passed on to consumer*
20 *prices; and how inflation expectations evolve.*¹

21 In its July 2025 Monetary Policy Report, the BOC underscored several key messages about the
22 outlook for the Canadian economy:²

- 23 1) Consumer price index (CPI) inflation was 1.9% in June. Changes in indirect taxes, such
24 as the HST/GST holiday and the removal of the consumer carbon tax, have impacted
25 CPI inflation since late 2024. When indirect taxes are excluded, inflation rose to 2.5%
26 in June 2025 from around 2% in the second half of 2024. This increase was mainly
27 because inflation in non-energy goods prices rose, more than offsetting an easing in
28 inflation in shelter services prices. Similarly, most measures of core inflation have

¹ Bank of Canada, Press Release issued July 30, 2025.

² Bank of Canada, Monetary Policy Report, July 2025, at 1-2.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 picked up since late 2024. Overall, underlying inflation is now assessed to be around
2 2½%.

3 2) Growth in the Canadian economy in the first quarter of 2025 was stronger than
4 expected at 2.2%, largely due to a temporary surge in exports in anticipation of US
5 tariffs. Growth is estimated to have contracted in the second quarter. While exports
6 and business investment have fallen, growth in consumer spending has been resilient,
7 and spending by government has picked up.

8 3) In the *current tariff scenario*, Canada's economic growth is modest, at 1% in the second
9 half of 2025. Growth then rises, reaching 1.8% in 2027 as the effects of trade policy
10 uncertainty fade and as global demand and exports increase modestly. Inflation
11 remains close to 2% throughout the scenario horizon. The upside pressures and
12 downside pressures on inflation are roughly offsetting and dissipate over time.

13
14 In the *de-escalation scenario*, growth is stronger, excess supply is reduced, and the direct upward
15 pressure on inflation from tariffs is reduced. In the *escalation scenario*, the Canadian economy
16 contracts through the rest of 2025, and inflation rises temporarily above the 2% target due to the
17 direct cost pressures from tariffs.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **Request IR-35:**

2
3 **IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to**
4 **Appendix page numbers at the bottom of each page).**

5
6 **Figure 13: Country Risk Ratings**

7 **Has The Economist updated its country risk rates for either Canada or the United States**
8 **since August 2021? If so, please restate Figure 13 based on the most recent update.**

9
10 **Response IR-35:**

11
12 Concentric does not have more recent data from The Economist. We do, however, provide data
13 from Allianz on page 27 of our report which confirms that Canada and the U.S. were ranked the
14 same (AA1) on total country risk as of January 2025.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-36:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

Figure 14 on page 29:

a) Do the listed transmission cables operate in competitive transmission markets?

i. If so, please identify the transmission cables that operate in a competitive transmission market.

b) Are approved ROEs for companies that operate in competitive transmission markets typically higher than those that do not operate in competitive markets? Please explain.

Response IR-36:

a) No. Transmission is regulated by the FERC and not subject to direct competition.

b) N/A.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **Request IR-37:**

2
3 **IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to**
4 **Appendix page numbers at the bottom of each page).**

5
6 **Page 34 states: “Nevertheless, the North American Electric T&D proxy group provides the**
7 **best comparator group for purposes of establishing the investor-required return for an**
8 **electric transmission company like NSPML.” Would Mr. Coyne expect the business and**
9 **financial risks associated with owning and operating a pure transmission company to be**
10 **different than those of a transmission and distribution company? Please explain.**

11
12 **Response IR-37:**

13
14 Yes, Concentric would expect a pure electric transmission company to have a different risk profile
15 than a T&D utility. Key differences for transmission companies include development and
16 permitting risk, the potential for project abandonment, construction cost risk, operating and
17 maintenance risk, and reliance on a single source of revenue. There are no pure-play electric
18 transmission companies that are publicly-traded, and there is no way to separate the market data
19 for a pure-play electric transmission company, so by necessity our return estimate for NSPML is
20 informed by returns for other electric transmission companies in Canada and the U.S., returns for
21 other subsea cable projects in the U.S., and an analysis of the cost of equity for a proxy group of
22 North American electric T&D companies, which is limited to only five peer companies. NSPML
23 has unique business risks that make it a higher risk entity than the average risk T&D utility, as
24 described in section 7 of our report, and which supports our recommended risk premium of 75-
25 100 basis points.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-38:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

a) Please provide the current credit rating for each of the companies listed in Figure 17 on page 35.

b) What is NS Power's current credit rating?

Response IR-38:

The requested credit ratings are provided below for the companies in Figure 17 of our report:

North American Electric T&D Proxy Group

Company	Ticker	S&P	Moody's	Fitch	DBRS
Canadian Utilities Ltd.	CU	NR	NR	A-	A
Hydro One Ltd.	H	A	NR	NR	A (high)
Consolidated Edison, Inc.	ED	A-	Baa1	BBB+	NR
Eversource Energy	ES	BBB+	Baa2	BBB	NR
Exelon Corp.	EXC	A-	Baa2	NR	NR
Nova Scotia Power, Inc.		BBB-	NR	NR	BBB (high)

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-39:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

- a) Please describe how the proxy group of North American T&D utilities aligns with NSPML's unique risk profile.**
- b) Please identify the utilities in the proxy group that manage "highly complex series of agreements" with other utilities and identify the type of agreement.**
- c) Page 44 states that the US and Canadian economies are highly integrated and capital investments across the border are regular and the risk premiums are correlated, therefore a single MRP for Canada and the US is reasonable. Please identify which of the US T&D utilities in the proxy group apply a Canadian Market Risk Premia to their calculation of an MRP?**
- d) In Exhibit N-3, worksheet CEA-7, why does the risk premium in column [5] use the US Government 30-year Treasury instead of a Canadian 30-year bond yield?**

Response IR-39:

- a) The five companies in the North American Electric T&D proxy group are similar to NSPML in terms of business and financial risk. The peer group companies own both regulated transmission and distribution assets, while NSPML is a pure electric transmission company. NSPML owns and operates HVDC subsea transmission cables, while the proxy group companies own overhead electric transmission lines which have lower physical risk. The North American peer group companies have higher S&P credit ratings ranging from A to BBB+, as shown in the response to NSEB-IR-38, compared to Nova Scotia Power's S&P rating of BBB- (or BBB high from DBRS), suggesting that the proxy group

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 companies are generally considered to have lower risk from the perspective of debt
2 investors.

3
4 b) Concentric has not researched the contract profiles of each proxy group company. In our
5 experience, NSPML's contractual arrangement is atypical for North American
6 transmission companies and distinguishes it from other transmission companies. See page
7 55 of our report for more specific details.

8
9 c) Please see page 28 of Concentric's report where we summarize our conclusions regarding
10 the integration of the Canadian and U.S. economies and capital markets. There we state:

11 *On balance, the economic and business environments of Canada and the U.S. are highly*
12 *integrated and exhibit strong correlation across a variety of metrics, including GDP*
13 *growth and government bond yields. From a business risk perspective, including overall*
14 *business environment and competitiveness, Canada and the U.S. are ranked closely when*
15 *compared against other developed and developing countries. Based on these*
16 *macroeconomic indicators, there are no fundamental dissimilarities between Canada*
17 *and the U.S. (in terms of economic growth, inflation, or government bond yields) that*
18 *would cause a reasonable investor to have a materially different return expectation for*
19 *a group of comparable risk utilities in the two countries.*

20
21 To clarify, our use of an average market risk premium in the CAPM analysis, we are not
22 saying that specific companies in our proxy group apply either a Canadian or U.S. market
23 risk premium. Rather, our position is that a reasonable investor would not apply a different
24 market risk premium given the similarity of country risk and the integration of capital
25 markets and economies.

26
27 d) The regression analysis in Exhibit CEA-7 uses a Canadian government bond yield, not a
28 U.S. Treasury bond yield. The reference in cell H41 should be to the Government of
29 Canada long bond yield.

NON-CONFIDENTIAL

Request IR-40:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

Page 45 to 46: Flotation Costs and Financing Flexibility

- a) Mr. Coyne states that seven of ten jurisdictions in Canada have historically granted a 50-basis point adjustment for flotation costs. Please confirm that Mr. Coyne has included the BCUC and the OEB in his seven, both of which he has noted have recently disallowed the recovery of flotation costs or allowed less than a 50-basis point adjustment for flotation costs.
- b) Please confirm that given Mr. Coyne's statement that "investors typically have a multi-year view of their required returns on equity" (p. 48) it follows that investors typically hold equity over a period of years, or explain otherwise.
- c) Please confirm, or explain otherwise, that flotation costs including "out-of-pocket expenditures for the preparation, filing, underwriting, as well as a discount to the share price, and other costs of issuance of common equity" are generally one-time transactional costs incurred on the sale of new issues of common equity.
- d) Please confirm that a 50-basis point adjustment for flotation costs for NSPML implies an annual expenditure of approximately \$2.3 million "for the costs associated with the sale of new issues of common equity." (i.e., 1/18th of the \$40.7 million associated with NSPML's proposed 9% return). If not confirmed, please provide the correct amount showing how it is calculated.
- e) Please provide all evidence of NSPML's actual "costs associated with the sale of new issues of common equity" (either directly incurred or allocated to it by affiliates) over the past five years.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 Response IR-40:

- 2
- 3 a) Confirmed. See pages 45-46 of Concentric's report where we summarize the treatment of
- 4 flotation costs in Canada. While the OEB reduced the allowance for flotation costs from
- 5 50 basis points to 25 bps, the 2024 GCOC decision gave utilities the opportunity to file
- 6 evidence with the OEB demonstrating that their actual costs were higher.
- 7
- 8 b) Yes, Concentric agrees that utility equity investors generally hold equity over a period of
- 9 years.
- 10
- 11 c) Not confirmed. Flotation costs are not one-time expenses but are costs of issuing equity
- 12 that extend over the life of the equity. For example, the discount to the share price is a
- 13 permanent discount; it is not recovered by shareholders at some future date.
- 14

15 In addition, it is not a requirement that utilities incur flotation costs in order for them to be

16 allowed to recover these costs in rates. The fact that NSPML itself does not issue equity

17 does not mean that NSPML (or its parent company on its behalf) does not incur flotation

18 costs and should not be allowed to recover them. Flotation costs are a legitimate cost of

19 issuing common stock. The great majority of a utility's flotation costs is incurred prior to

20 the test year but remains part of the cost structure that exists during the test year and

21 beyond. For this reason, most Canadian utility regulators have approved an adjustment for

22 flotation costs and financial flexibility of 50 basis points. This cost is appropriate

23 regardless of whether an equity issuance occurs during, or is planned for, the test year. To

24 the extent NSPML is denied the opportunity to recover prudently incurred flotation costs,

25 the Company's actual returns will fall short of expected (or required) returns, thereby

26 diminishing NSPML's ability to attract adequate capital on reasonable terms.

27

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 d) NSPML's initial capital costs of \$1.7 billion including AFUDC was funded 70% debt and
2 30% equity. There have been no material capital additions since going into operations in
3 2018, with the first material capital addition planned for 2026. Therefore, there have been
4 no equity issuances required to maintain Emera's equity investment in NSPML other than
5 its original 30% investment in original project costs.

6
7 e) NSPML is a subsidiary of Emera Inc. therefore requires equity injections from Emera. How
8 Emera finances the equity injection is at the discretion of the Shareholder. NSPML cannot
9 provide costs associated with any equity issuances as it relates to NSPML.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **Request IR-41:**

2
3 **IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to**
4 **Appendix page numbers at the bottom of each page).**

5
6 **Page 55 states: “NSPML is subject to both operational and contract management risk that**
7 **can result in disallowances. These can either come about as a result of management of energy**
8 **(NS Block obligations and purchased energy rights via the NS Power FAM review), as well**
9 **as management of the physical assets which are covered in NSPML’s assessments.” This**
10 **statement appears to imply the potential of failing to abide by its contractual commitments**
11 **to deliver energy to customers is a risk that NSPML incurs, and that this risk should result**
12 **in a higher approved ROE than would otherwise be allowed. Please explain.**

13
14 **Response IR-41:**

15
16 The context leading into the above quoted statement relates to comparing the complexity of
17 NSPML’s operations to the comparator group that is made up of traditional HVAC transmission
18 overhead facility operators. As covered in detail throughout NSPML’s Application, NSPML (and
19 Concentric through its expert evidence) submit that NSPML’s assets and contractual management
20 requirements are more complex than that of the comparator group. Higher complexity necessarily
21 denotes higher risk and, when comparing, higher risk is one factor that supports an entity having
22 a higher ROE or stronger equity layer than a less risky entity. Despite these risk factors, NSPML’s
23 requested ROE of 9.0% is well under the market-based ROE estimated by Concentric of 10.10%
24 to 10.35% for NSPML.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-42:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

Page 56 states: “As evidence that NSPML has greater than average business risk, Concentric observes that the Company has been unable to earn its authorized return in most years since the Maritime Link was placed in service in 2018. As shown in Figure 27 below, the earned ROE for NSPML has generally been below the authorized ROE range of 8.75% to 9.25%. Specifically, the average regulated ROE from 2018-2024 was 8.50%.”

a) Does Mr. Coyne agree that part of the reason NSPML was not able to earn its approved ROE in many of these years was related to NSPML’s inability to deliver the full extent of the NS Block and the related holdback mechanism implemented by the Board to protect customers? Please explain.

b) Note 3 for Table 27 states: “If ~\$10M of 2024 holdback is disallowed, the regulated ROE will be adjusted to ~7.27% for 2024.”

i. Please explain the meaning of “if ~\$10M of 2024 holdback is disallowed”.

ii. Based on NS Power’s calculations, does it expect to lose any portion of the \$10 million for 2024?

Response IR-42:

a) Yes. In particular ROE in years 2018, 2019, 2020 and 2022, NSPML would have earned its ROE had holdback not been incurred. The application of Holdback to NSPML is a direct reduction in its revenue requirement; therefore, a direct impact/reduction to a lower ROE than would have been requested in its applications.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 b)

2 i. NSPML was in the process of preparing an application to end the Holdback
3 mechanism at the time of filing the 2024 Financial Statements. Should that process
4 have soon followed the filing of the financial statements, the impact of any decision
5 to disallow revenue that NSPML had recorded as earned in 2024 would have
6 impacted the 2024 ROE. NSPML believes the rationale (i.e. planned outages in
7 accordance with Good Utility Practice and extreme weather events) for recording
8 the \$10M in 2024 is appropriate. The holdback application is now expected to be
9 filed in Q4 2025/early 2026.

10
11 ii. NSPML cannot speak on behalf of NS Power; however, based on the rational of
12 recording the \$10M holdback in 2024, NSPML expects NS Power to be able to
13 release the funds related to the 2024 Holdback of \$10M.

14
15 For clarification, for financial reporting purposes, NSPML records management's best
16 estimate as to how holdback amounts will ultimately be treated. Given prior holdback
17 treatment (albeit under different rationale) and the circumstances surrounding the above
18 referenced holdback amounts, NSPML judgement in preparing its financial statements was
19 that these amounts will ultimately be refunded to NSPML. To be clear, making this
20 determination is at the Company's risk and NSPML acknowledges there is risk that the
21 Board could determine otherwise. The fact that NSPML has recorded certain holdback
22 amounts in a certain manner in its financial statements in no way removes or inhibits the
23 Board's independence and ability to make a determination that is not aligned with
24 NSPML's assumptions in this regard.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Request IR-43:

IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to Appendix page numbers at the bottom of each page).

Figure 27 Authorized vs. Regulated ROE for NSPML

- a) Does Mr. Coyne agree that in all years NSPML has exceeded its authorized equity thickness? (2018 – 30.6%, 2019 – 30.4%, 2020 – 30.5%, 2021 – 30.5%, 2022 – 30.7%, 2023 – 30.65%, 2024 – 30.89%)**
- b) Does Mr. Coyne agree that if the return on equity calculation was based on its authorized equity thickness, the return on equity would be higher in each year?**
- c) Please see the Board’s decision letter in M10528 where the Board noted that NSPML’s ROE in 2021 was 9.35% because the ‘adjusted’ calculation of 9.15% provided by NSPML was wrong because the Board had specifically directed NSPML to exclude its HEAT Fund donation from regulated net earnings. Does Mr. Coyne agree that NSPML’s ROE in 2021 was 9.35% on an equity thickness of 30.5%?**
- d) Mr. Coyne has excluded the recognition of \$3.1 million of holdback revenue in 2023 that related to 2022 to show the true ROE of that year but has not added back that revenue to the calculation in 2022 of the ROE for 2022 shown in Figure 27. Does Mr. Coyne agree that for an accurate representation of average return, the \$3.1 million needs to either be included in the calculation of 2023 ROE or 2022 ROE since it was revenue received by NSPML?**
- e) Based on the above noted errors in 2021 and 2022, and adjusted to cap the equity thickness at the authorized 30%, Board staff submits that Figure 27 would be as follows:**

(Appendix A attached from Board staff with formulae intact):

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

Year	Authorized	Regulated	Reference			
2018	9%	8.80%	M10057, Exhibit N-1(i) p.6			
2019	9%	8.69%	M10057, Exhibit N-1(ii) p.6			
2020	9%	8.40%	M10057, Exhibit N-1(iii) p.6			
2021	9%	9.50%	M10528, Exhibit N-1(ii), p.6 (excluding donation)			
2022	9%	7.77%	M11072, Exhibit N-1(i), p.6 (adjusted for the holdback)			
2023	9%	8.85%	M11628, Exhibit N-4, p.6			
2024	9%	9.52%	M12182, Exhibit N-4, p.6			
		8.79%				

Does Mr. Coyne agree that, with these adjustments considered, NSPML's average ROE is within the approved earnings band?

Response IR-43:

a) Yes. However, NSPML has never paid out to the Shareholder ROE above 9.25% of 30% of rate base in any year. As a result of NSPML's debt financing, NSPML is not able to adjust it's regulated equity by rebalancing debt, as all debt is federally guaranteed debt, fixed and paid down over time.

b) Yes. However, NSPML only collects from customers based on 30% of rate base and a 9% ROE, and as mentioned above has never paid out more then 9.25% of 30% of rate base in any year.

c) Yes.

d) Yes. However, as opposed to adjusting the ROE's as presented in the annual regulated financial statements, the submitted and approved ROE's were used as per the statements. Concentric noted the difference in ROE if the \$3.1M was included in the 2023 & 2022 ROE in footnote 2 on page 56.

e) Yes. Please see 2024 Financial Statement NSEB IR-21.

NSPML 2026 Assessment Application
(NSEB M12394)
NSPML Responses to Nova Scotia Energy Board Information Requests

NON-CONFIDENTIAL

1 **Request IR-44:**

2
3 **IR-32 to IR-44 Reference Exhibit N-1, Appendix A, Concentric Expert Evidence (refer to**
4 **Appendix page numbers at the bottom of each page).**

5
6 **Page 57 states: “Some may argue that the debt used to finance the Maritime Link project**
7 **cost of \$1.7 billion issued by the Maritime Link Financing Trust and guaranteed by the**
8 **government of Canada lowers NSPML’s risk. However, the debt guarantee does not protect**
9 **equity investors. Any disallowances are 100% assigned to equity, and given the relatively**
10 **thin equity ratio, these risks are disproportionately larger than would be the case with a**
11 **typical capital structure.”**

12 **a) Does Mr. Coyne agree that any disallowances approved by the Board would only be**
13 **a result of imprudence by NSPML? Please explain.**

14 **b) Does Mr. Coyne agree that disallowances ordered by the Board to NS Power are**
15 **100% assigned to shareholders? Please explain.**

16
17 **Response IR-44:**

18
19 a) No. The Holdback also impacts equity shareholders as it results in a direct reduction in
20 ROE, which is not due to imprudence. Additionally, due to the greater leverage of NSPML
21 in relation to its peers, any disallowance has a greater impact on equity holders than it
22 would for a traditionally capitalized utility.

23
24 b) Yes.