NALCOR ENERGY

and

EMERA INC.

ENERGY AND CAPACITY AGREEMENT

July 31, 2012

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Schedules:

THIS ENERGY AND CAPACITY AGREEMENT is made effective the 31st day of July, 2012 (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**")

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; and

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;

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:

"**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**" 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 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 of even date herewith 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 of even date herewith 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 of even date herewith 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 of even date herewith between Nalcor and Emera relating to the development of the Maritime Link;

"**Maritime Link (Nalcor) Transmission Service Agreement**" means the agreement of even date herewith 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 Native Load Customers**" has the meaning of "Native Load Customers" set forth in the NS OATT;

"**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 of even date herewith 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 of even date herewith 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 of even date herewith 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), currently calculated to be 0.98 TWh of Energy annually (such quantity to be finally determined in accordance with **Schedule 2**); 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;

"**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 restated 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 Standard 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;

"**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 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) 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;

(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; or

(iii) **Section 1.2(m)(iii)** applies, in respect of the matters referred to in that provision:

(A) each Party is free to negotiate and to reach or not reach agreement having regard to its own interests in its sole and absolute discretion; 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 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	-	Methodology for Calculating the Average Energy Production Entitlement at the Muskrat Falls Plant
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 Additional Energy to Emera

If Emera requires long term Energy and/or Capacity in addition to the Nova Scotia Block to serve NS Native Load Customers, and Nalcor makes additional Energy and/or Capacity available to Emera, the Parties shall negotiate to reach commercial agreements on terms and at prices mutually acceptable to the Parties. **Section 1.2(m)(iii)** applies to this **Section 2.6**.

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 shall become 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) Nalcor Non-Sanction, as defined in the ML-JDA;

(b) Emera Non-Sanction, as defined in the ML-JDA;

(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 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 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 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 date of this Agreement, (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 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 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;

(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:

ENL 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

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). 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:

NALCOR ENERGY

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

By: _____
Name: Derrick Sturge
Title: Vice President, Finance and Chief Financial Officer

_____
Name: Rob Hull

By: _____
Name: Gilbert Bennett
Title: Vice President, Lower Churchill Project

We have authority to bind the corporation.

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

EMERA INC.

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

_____
Name: Peter Doig

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

METHODOLOGY FOR CALCULATING THE AVERAGE ENERGY PRODUCTION ENTITLEMENT AT THE MUSKRAT FALLS PLANT

METHODOLOGY FOR CALCULATING THE AVERAGE ENERGY PRODUCTION ENTITLEMENT AT THE MUSKRAT FALLS PLANT

The annual amount of Energy of the Nova Scotia Block (other than Supplemental Energy) is calculated as at the Effective Date to be 0.98 TWh and will be adjusted prior to Sanction of the ML by Nalcor in accordance with the following:

The annual amount of Energy of the Nova Scotia Block is 20% of the predicted average Energy production of the MFP, which will be recalculated through a numerical simulation by Nalcor's hydrological consultant. The simulation will consider the following factors:

1. An inflow series for the Churchill River upstream of Muskrat Falls covering the period from 1957 to 2010.

2. Parameters for the Churchill Falls and Muskrat Falls facilities, including turbine/generator ratings, efficiency curves, and fish compensation flow requirements.

3. Reservoir characteristics, including transit times, full and low supply levels, and storage and tailwater curves.

4. The as-built characteristics for Churchill Falls, and the final design characteristics for the Muskrat Falls Plant at the later of the date of sanction by Nalcor of the MFP and the date when turbine generation equipment is ordered with final design parameters, including efficiency curves and ratings.

5. The Nalcor-CF(L)Co water management agreement is in place.

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-MLLSF) x (1-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

Prior to Sanction, 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**.

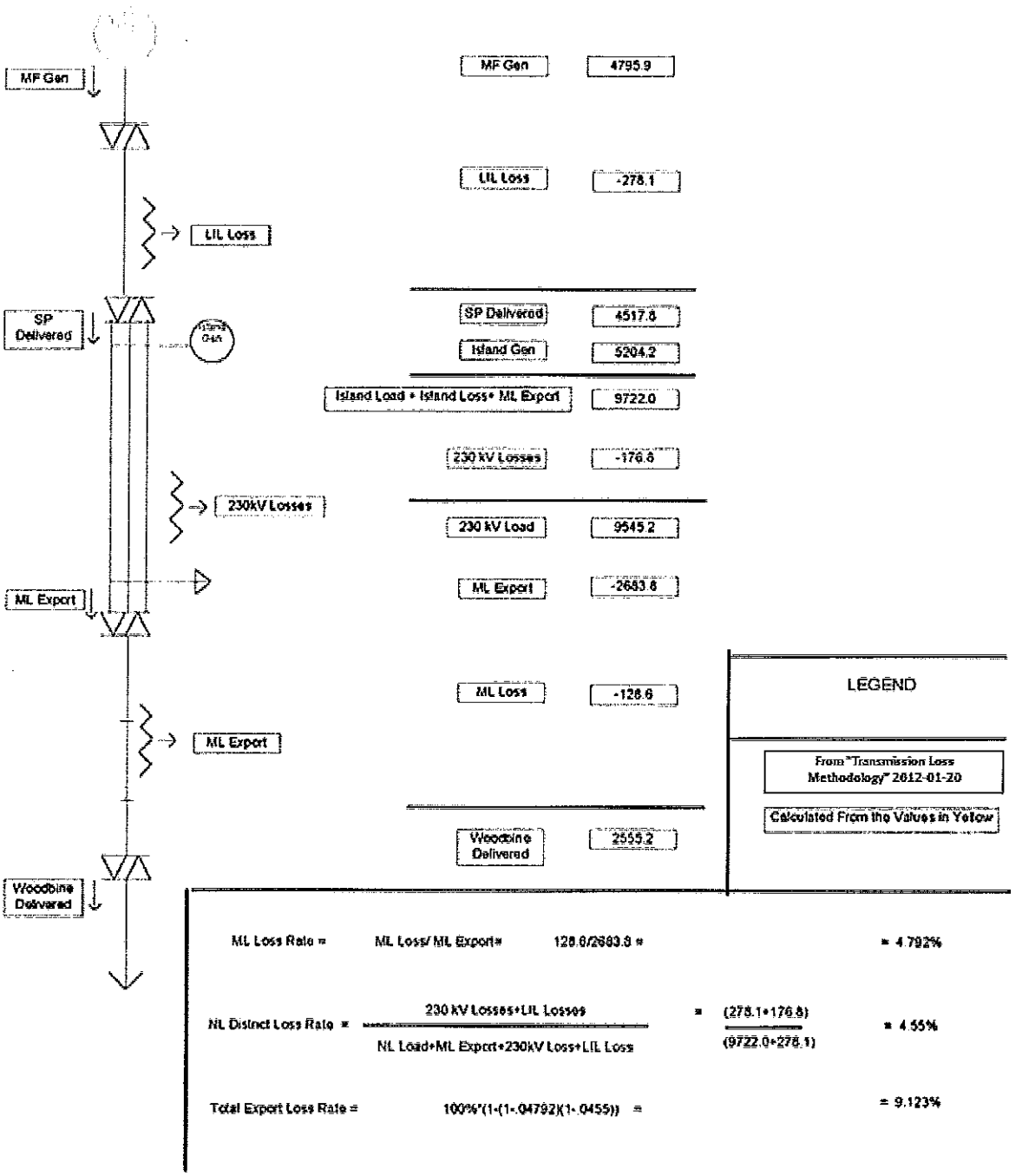
6.0 Disputes

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 Energy and Capacity Agreement between Nalcor Energy and Emera Inc. made effective 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	The amount determined pursuant to **Schedule 2** of this Agreement, being the annual amount of the Nova Scotia Block excluding Supplemental Energy.
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.

Nothing in this Schedule affects Emera's rights under Section 5.2(b) of the ML-JDA.

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

Prior to Sanction, 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 a 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]