

EMERA INC.

and

NALCOR ENERGY

**MARITIME LINK (NALCOR)
TRANSMISSION SERVICE AGREEMENT**

July 31, 2012

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THIS MARITIME LINK (NALCOR) TRANSMISSION SERVICE AGREEMENT is made effective the 31st day of July, 2012 (the “**Effective Date**”)

BETWEEN:

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

- and -

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 “**Transmission Customer**”)

WHEREAS:

- A. the Parties have entered into a term sheet dated November 18, 2010 (“**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; and
- B. this Agreement is one of the Formal Agreements contemplated by the Term Sheet and is to provide for the provision of Transmission Rights by Emera to Nalcor over the Maritime Link during the 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:

“**Additional Transmission Rights Terms**” has the meaning set forth in **Section 3.7**;

“**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;

“Ancillary Services” means those services that are necessary to support the transmission of Energy and Capacity from resources to loads while maintaining reliable operation of a Transmission System in accordance with Good Utility Practice;

“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;

“Assignee” has the meaning set forth in **Section 3.3(h)(i)**;

“Atlantic Prevailing Time” or **“APT”** means the time prevailing at the applicable time, being either Atlantic Standard Time or Atlantic Daylight Time;

“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;

“Available Transfer Capability” or **“ATC”** means the transfer capability remaining in a physical transmission network for further commercial activity over and above already committed uses;

“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 13.2(a)**;

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

“Commercial Operation Date” has the meaning set forth in the Maritime Link Joint Development Agreement;

“Conditional Firm Point-to-Point Transmission Service” means Point-to-Point Transmission Service under this Agreement that is reserved and/or Scheduled between the specified Point of Receipt and Point of Delivery pursuant to **Section 2.8** and is subject to Curtailment as set forth in **Section 3.3(f)**;

“Conditional Firm Reserved Capacity” has the meaning set forth in **Section 2.8(b)**;

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

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

“Control Area” (also known as “balancing authority area”) means an electric power system or combination of electric power systems to which a common automatic generation control scheme is applied in order to:

- (i) match, at all times, the power output of the generators within the electric power system and Energy and Capacity purchased from entities outside the electric power system, with the load within the electric power system;
- (ii) maintain scheduled interchange with other Control Areas, within the limits of Good Utility Practice;
- (iii) maintain the frequency of the electric power system within reasonable limits in accordance with Good Utility Practice; and
- (iv) provide sufficient generating Capacity to maintain operating reserves in accordance with Good Utility Practice;

“Curtail” or **“Curtailment”** means a reduction in Firm Point-to-Point Transmission Service, Conditional Firm Point-to-Point Transmission Service or Non-Firm Point-to-Point Transmission Service in response to a transfer capability shortage as a result of system reliability conditions;

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

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

“Dispute Resolution Procedure” has the meaning set forth in **Section 13.1**;

"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 OASIS" means the Open Access Same Time Information System maintained by Emera or an Affiliate of Emera;

"Energy" means electrical energy measured and expressed in MWh;

"Energy and Capacity Agreement" or **"ECA"** means the agreement of even date herewith between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block;

"Excise Tax Act" means the *Excise Tax Act* (Canada);

"Extended Force Majeure Period" has the meaning set forth in **Section 6.3(a)(ii)**;

"Firm Point-to-Point Transmission Service" means Point-to-Point Transmission Service under this Agreement or the ML (Emera) TSA that is reserved and/or scheduled between specified Points of Receipt and Points of Delivery and is subject to Curtailment as set forth in **Section 3.3(f)**;

"Force Majeure" has the meaning set forth in **Section 5.1**;

"Formal Agreements" means the agreements listed in **Schedule 5**;

"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 NS after Sanction by Nalcor, the effect of which is to cause Transmission Customer to

be deprived of the delivery or enjoyment of, or access to, the Point-to-Point Transmission Service provided for under this Agreement and includes a measure or measures which:

- (a) materially increases the costs that Transmission Customer could reasonably be expected to incur under or related to this Agreement; or
- (b) materially diminishes the value to Transmission Customer of the Point-to-Point Transmission Service provided for under this Agreement.

Government Action shall not include a measure or measures taken by NS which is:

- (a) consented to in writing by Transmission Customer; 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);

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

“Indemnified Party” has the meaning set forth in **Section 9.4(a)**;

“Indemnitor” has the meaning set forth in **Section 9.4(a)**;

“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;

"Interconnection Operators Agreement" means the agreement of even date herewith between NLH and NSPI relating to the interconnected operations of NLH and NSPI;

"Interconnection Operators Committee" means the committee comprised of representatives of the NSPSO and representatives of the NLSO, as established pursuant to the Interconnection Operators Agreement;

"Interrupt" or "Interruption" means a reduction in Non-Firm Point-to-Point Transmission Service as described in **Section 3.3(f)(ii)**;

“Island Interconnected System” means the bulk energy transmission system on the island portion of NL owned and operated by NLH but, for greater certainty, excluding any part of the Labrador-Island Link or the Maritime Link;

“Joint Operations Agreement” or **“JOA”** means the agreement of even date herewith between Nalcor and Emera relating, among other things, to the operation and maintenance of the ML, the LIL and the LTA;

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

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

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

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

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

“ML-JDA Basis of Design” has the meaning given to “Basis of Design” in the ML-JDA;

“ML Transmission Procedures” has the meaning set forth in **Section 3.3(a)**;

“MW” means megawatt;

“MWh” means MW hours;

“Maritime Link” or **“ML”** means the transmission facilities to be constructed in accordance with the Maritime Link Joint Development Agreement to transmit Energy and Capacity between the Island Interconnected System and the NS Transmission System;

“Maritime Link (Emera) Transmission Service Agreement” or **“ML (Emera) TSA”** means the agreement of even date herewith between Emera and an Affiliate of Emera relating to the Transmission Rights of an Affiliate of Emera 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 Transmission Capacity” means the thermal capacity that the facilities comprising the Maritime Link can withstand in the Maritime Link’s configuration as specified in the ML-JDA

Basis of Design without regard to external system impacts by the interconnected AC Transmission Systems or other Transmission Systems;

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

"NL" means the Province of Newfoundland and Labrador;

"NL Crown" means Her Majesty the Queen in Right of NL;

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

"NLSO" means the system operations department of NLH responsible for the safe and reliable operation of the bulk electric system in NL, or a functionally separate division of NLH performing this function, or any successor as applicable;

"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;

"NL Transmission System" means the transmission facilities located in NL, operating at a voltage level of 230 kV or higher;

"NS" means the Province of Nova Scotia;

"NS OATT" means the NSPI Open Access Transmission Tariff, as approved by the UARB, as it may be amended, restated, reissued or replaced from time to time;

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

"NSPSO" means the Nova Scotia Power system operator, a functionally separate division of NSPI responsible for the safe and reliable operation of the bulk energy system in NS, or any successor;

"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 138 kV, 230 kV and 345 kV transmission facilities located in NS;

"Nalcor" has the meaning set forth in the preamble to this Agreement and includes Nalcor's successors and permitted assigns;

“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;

“Non-Firm Point-to-Point Transmission Service” means Point-To-Point Transmission Service that is reserved and/or scheduled between specified Point of Receipt and Point of Delivery on an as-available basis and is subject to Curtailment or Interruption as set forth in **Section 3.3(f)(ii)**;

“Northerly Reserved Firm Capacity” has the meaning set forth in **Section 2.7(b)**;

“Notice” means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 15.1**;

“Nova Scotia Block” means the Energy entitlement of Emera pursuant to the Energy and Capacity Agreement;

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

“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 Maritime Link which in and of itself will result in an Interruption to, or Curtailment of, the provision of Point-to-Point Transmission Service pursuant to this Agreement;

“Points of Delivery” means the Points of Delivery specified in **Article 2** to which Energy and Capacity will be transmitted by Transmission Provider pursuant to this Agreement;

“Points of Receipt” means the Points of Receipt specified in **Article 2** at which Energy and Capacity will be received by Transmission Provider for transmittal pursuant to this Agreement;

“Point-to-Point Transmission Service” means the reservation and transmission of Energy and Capacity on either a firm, conditional firm or non-firm basis from the Points of Receipt to the Points of Delivery;

“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;

"Reactive Supply and Voltage Control" has the meaning set forth in **Section 3.4(b)**;

"Recipient Party" has the meaning set forth in **Section 13.2(a)**;

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

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

"Repairs" means repairs, changes, renewals, improvements and/or replacements;

"Safety Event" means an event which causes Transmission Provider to suspend the provision of Point-to-Point Transmission Service for the purpose of safeguarding life or property by making Repairs to the Maritime Link in accordance with Good Utility Practice;

"Sanction" has the meaning set forth in the Maritime Link Joint Development Agreement;

"Schedule", **"Scheduled"** and **"Scheduling"**, when used as a verb, means all acts necessary to schedule, or cause to be scheduled, the transmission services as provided for in this Agreement;

"Scheduling, System Control and Dispatch Service" means those administrative services required to Schedule and coordinate the movement of power across the Maritime Link;

"Service Life" means the "Initial Service Life" of the Maritime Link, as defined in the Maritime Link Joint Development Agreement, and as may be revised from time to time by Nalcor if Nalcor becomes the owner of the Maritime Link;

"Service Term" has the meaning set forth in **Section 2.3**;

"Southerly Reserved Firm Capacity" has the meaning set forth in **Section 2.7(a)**;

"Specified Dispute" has the meaning set forth in the Dispute Resolution Procedure;

"System Condition" means the condition that exists at any time during which a reduction in the TTC of the Maritime Link would occur as a result of the loss or unavailability of one pole of the Maritime Link HVdc transmission line or any other de-rating of the Maritime Link due to an operating condition or contingency on the Maritime Link;

“System Operator” means NSPSO or NLSO, as the context requires;

“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 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 as referred to in **Section 9.1 or 9.2**;

“Total Transfer Capability” or “TTC” means the amount of electric power that can be moved or transferred reliably from one area to another area of interconnected Transmission Systems by way of all transmission lines (or paths) between those areas under specified system conditions;

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

“Transmission Customer Affiliate Assignee” means an Affiliate of Transmission Customer to which all or any portion of the Transmission Customer Rights have been assigned in accordance with **Section 12.1(a)**, either directly by Transmission Customer or by any Affiliate of Transmission Customer that was a previous assignee of such Transmission Customer Rights;

“Transmission Customer Default” has the meaning set forth in **Section 7.4**;

“Transmission Customer Group” has the meaning set forth in **Section 9.2**;

“Transmission Customer Rights” has the meaning set forth in **Section 12.1(a)**;

“Transmission Losses” means the total of Energy losses on the Maritime Link, as determined in accordance with **Schedule 1**;

“Transmission Loss Factor” has the meaning set forth in **Schedule 1**;

"Transmission Provider" has the meaning set forth in the preamble to this Agreement and includes Transmission Provider's successors and permitted assigns;

"Transmission Provider Affiliate Assignee" means an Affiliate of Transmission Provider to which all or any portion of the Transmission Provider Rights have been assigned in accordance with **Section 12.2(a)**, either directly by Transmission Provider or by any Affiliate of Transmission Provider that was a previous assignee of such Transmission Provider Rights;

"Transmission Provider Default" has the meaning set forth in **Section 7.1**;

"Transmission Provider Group" has the meaning set forth in **Section 9.1**;

"Transmission Provider Rights" has the meaning set forth in **Section 12.2(a)**;

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

"Transmission System" means a network for transmitting high voltage electricity, and includes structures, equipment or other facilities used for that purpose;

"UARB" means the Utility and Review Board body established by NS pursuant to the *Utility and Review Board Act* (Nova Scotia), as it may be replaced or reconstituted from time to time;

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

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

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **"Article"**, **"Section"**, **"Schedule"** or **"Appendix"** followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms **"this Agreement"**, **"hereof"**, **"herein"**, **"hereby"**, **"hereunder"** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document 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)**, Transmission Provider shall use commercially reasonable efforts to provide Transmission Customer with all of the information it needs to prepare its accounting records in accordance with Canadian GAAP.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be "approved" by a Party, then (i) such approval by a Party must be in writing, and (ii) such Party shall be free to take such action having regard to that Party's own interests, in its sole and absolute discretion.
- (m) Subsequent Agreements - Wherever a provision of this Agreement states that **Section 1.2(m)** applies, in respect of the matters referred to in that provision:
 - (i) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing;
 - (ii) any failure, inability or refusal of either Party or both Parties to reach agreement shall constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure;
 - (iii) such Dispute shall be resolved as a Specified Dispute if so specified in such provision; and
 - (iv) if such Dispute is not a Specified Dispute, the Parties will be deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve the Dispute by arbitration.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 13**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have

to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

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

- Schedule 1 – Calculation of Maritime Link Transmission Losses
- Schedule 2 – Maritime Link Scheduling Process
- Schedule 3 – Dispute Resolution Procedure
- Schedule 4 – Form of Assignment Agreement
- Schedule 5 – Formal Agreements

ARTICLE 2 SPECIFICATIONS FOR POINT-TO-POINT TRANSMISSION SERVICE

2.1 Parties

This Agreement is entered into by and between Emera, as Transmission Provider, and Nalcor, as Transmission Customer.

2.2 Provision of Transmission Service

Transmission Provider agrees to provide and Transmission Customer agrees to take and pay for Firm Point-to-Point Transmission Service and Conditional Firm Point-to-Point Transmission Service in accordance with the terms of this Agreement.

2.3 Term of Point-to-Point Transmission Service

The term of the Firm Point-to-Point Transmission Service and the Conditional Firm Point-to-Point Transmission Service provided pursuant to this Agreement shall be the Service Life, commencing on the Commercial Operation Date (the “**Service Term**”).

2.4 General Description of Energy and Capacity to be Transmitted

The amount of Energy and Capacity to be transmitted pursuant to this Agreement shall be the amount up to the bi-directional Maritime Link Transmission Capacity, which is currently expected to be 500 MW and as may be adjusted pursuant to the ML-JDA Basis of Design prior to the Commercial Operation Date, less the uni-directional transmission capability from Bottom Brook, NL to Woodbine, NS, for which a separate Firm Point-to-Point Transmission Service reservation over the Maritime Link has been established on even date herewith pursuant to the ML (Emera) TSA. For greater certainty, upon the termination of the ML (Emera) TSA, the firm uni-directional transmission capacity associated with the Firm Point-to-Point Transmission Service reservation provided for under the ML (Emera) TSA shall be deemed to be available to Transmission Customer as part of the

Southerly Reserved Firm Capacity, and **Section 2.7(a)** shall be amended by deleting the following: “(i) the Firm Point-to-Point Transmission Service reservation pursuant to the ML (Emera) TSA during Peak Hours, and (ii)”. The transmission Capacity associated with the transmission services to be provided under this Agreement shall be expressed in terms of whole MW on a 60 minute interval (commencing on the clock hour) basis.

2.5 Points of Receipt and Delivery – Southerly Flow

- (a) Point of Receipt: The point of interconnection of the Island Interconnected System and the Maritime Link at the 230 kV side of the HVdc converter station transformers located at Bottom Brook, NL
- (b) Point of Delivery: The point of interconnection of the Maritime Link and the NS Transmission System at the 345 kV side of the HVdc converter station transformers located at Woodbine, NS
- (c) Scheduling Party: Transmission Customer

2.6 Points of Receipt and Delivery – Northerly Flow

- (a) Point of Receipt: The point of interconnection of the Maritime Link and the NS Transmission System at the 345 kV side of the HVdc converter station transformers located at Woodbine, NS
- (b) Point of Delivery: The point of interconnection of the Island Interconnected System and the Maritime Link at the 230 kV side of the HVdc converter station transformers located at Bottom Brook, NL
- (c) Scheduling Party: Transmission Customer

2.7 Maximum Firm Energy and Capacity to be Transmitted

- (a) Southerly Flow: Transmission Customer shall have the right to Schedule the transmission of Energy and Capacity from Bottom Brook, NL to Woodbine, NS, under a Firm Point-to-Point Transmission Service reservation up to a maximum of the Maritime Link Transmission Capacity for this flow direction as established pursuant to the ML-JDA Basis of Design as at the Commercial Operation Date, minus (i) the Firm Point-to-Point Transmission Service reservation pursuant to the ML (Emera) TSA during Peak Hours, and (ii) the amount of Conditional Firm Reserved Capacity set forth in **Section 2.8(b)** (the “**Southerly Reserved Firm Capacity**”).
- (b) Northerly Flow: Transmission Customer shall have the right to Schedule the transmission of Energy and Capacity from Woodbine, NS to Bottom Brook, NL, under a Firm Point-to-Point Transmission Service reservation up to a maximum of 100% of the Maritime Link Transmission Capacity for this flow direction as established pursuant to the ML-JDA Basis of Design as at the Commercial Operation Date minus

the amount of Conditional Firm Reserved Capacity set forth in **Section 2.8(b)** (the “**Northerly Reserved Firm Capacity**”).

- (c) Reassessment: Two years after the Commercial Operation Date, and every five years thereafter, Transmission Provider shall have the right to review and revise the Southerly Firm Reserved Capacity and Northerly Firm Reserved Capacity to be provided to Transmission Customer pursuant to this **Section 2.7**. Notice of such reassessment shall be provided to the Transmission Customer no later than six months prior to the anniversary date of the Commercial Operation Date for the reassessment year. In the event that Transmission Provider fails to provide such Notice, or otherwise decides not to undertake such reassessment, the reassessment right shall be deemed waived until the completion of the next five year period.

2.8 **Conditional Firm Point to Point Reservation**

- (a) Availability of Conditional Firm Point-to-Point Transmission Service: Transmission Provider shall have sufficient transmission reliability margin on the Maritime Link to accommodate the Firm Point-to-Point Transmission Service reservations set forth in **Section 2.7**. In addition, the transmission reliability margin on the Maritime Link shall have, subject to **Sections 2.7(c)** and **2.8(e)**, the ability to accommodate up to an amount equal to 50% of the Maritime Link Transmission Capacity on a firm basis in all instances except when a System Condition exists.
- (b) Conditional Firm Reserved Capacity: Transmission Customer shall have the right to Schedule the transmission of Energy and Capacity over the Maritime Link under a Conditional Firm Point-to-Point Transmission Service reservation in an amount equal to 50% of the Maritime Link Transmission Capacity, subject to **Sections 2.7(c)** and **2.8(e)** (“**Conditional Firm Reserved Capacity**”).
- (c) Scheduling: Transmission Customer shall Schedule, and Transmission Provider shall transmit Energy and Capacity using a Conditional Firm Point-to-Point Transmission Service reservation pursuant to the scheduling practices established by the ML Transmission Procedures. The Scheduling and use of Conditional Firm Point-to-Point Transmission Service shall be subject to Curtailment protocols set forth in **Section 3.3(f)**.
- (d) Priority of Service: Except in the instance where a System Condition has been identified, schedules for the transmission of Energy and Capacity over the Maritime Link under a Conditional Firm Point-to-Point Transmission Service reservation shall be accorded the same transmission Scheduling priority as Firm Point-to-Point Transmission Service. In the event that it is determined that a System Condition exists, any Energy and Capacity schedules made pursuant to a Conditional Firm Point-to-Point Transmission Reservation shall be accorded “conditional firm” status, which is subordinate to Firm Point-to-Point Transmission Service, but at a higher priority than Non-Firm Point-to-Point Transmission Service for the purpose of Scheduling service over the Maritime Link during the existence of the System Condition.

- (e) **Reassessment:** Two years after the Commercial Operation Date, and every five years thereafter, Transmission Provider shall have the right to review the Conditional Firm Reserved Capacity amount and the periods in which System Conditions exist, and, following such review, to revise the Conditional Firm Reserved Capacity amount to be provided to Transmission Customer pursuant to **Section 2.8(b)**. Notice of such reassessment shall be provided to the Transmission Customer no later than six months prior to the anniversary date of the Commercial Operation Date for the reassessment year. In the event that Transmission Provider fails to provide such Notice, or otherwise decides not to undertake such reassessment, the reassessment right shall be deemed waived until the completion of the next five year period.

ARTICLE 3 GENERAL TERMS OF SERVICE

3.1 **Point-to-Point Transmission Service**

- (a) Transmission Provider will arrange for and/or coordinate the operation and maintenance of the Maritime Link, in accordance with the ML Transmission Procedures as well as Good Utility Practice in order to provide Transmission Customer with Firm Point-to-Point Transmission Service and Conditional Firm Transmission Service over the Maritime Link pursuant to this Agreement. Transmission Provider shall take all steps necessary, in accordance with Good Utility Practice, to ensure that the operation and maintenance of the Maritime Link allows for the maintenance of sufficient transfer capability over the Maritime Link and its interconnections to the NS Transmission System and the NL Transmission System so as to allow for the transfer of the Energy and Capacity into the NS Transmission System and the NL Transmission System at a level equal to the Maritime Link Transmission Capacity.
- (b) Subject to the provisions of this Agreement, Transmission Customer shall have the right to Schedule the receipt of Energy and Capacity from the Points of Receipt and the transfer of such Energy and Capacity to the Points of Delivery, allowing for Transmission Losses in accordance with **Section 3.3(e)**. The provision of such Point-to-Point Transmission Service shall be conducted pursuant to the following terms:
- (i) **Firm Point to Point Transmission Service**
- Transmission Provider shall provide Firm Point-to-Point Transmission Service through firm deliveries of Energy and Capacity from the Points of Receipt to the Points of Delivery up to the Southerly Reserved Firm Capacity and the Northerly Reserved Firm Capacity.
- (ii) **Conditional Firm Point-to-Point Transmission Service**
- Transmission Provider shall provide Conditional Firm Point-to-Point Transmission Service through conditional firm deliveries of Energy and

Capacity from the Points of Receipt to the Points of Delivery over the Maritime Link up to the Conditional Firm Reserved Capacity.

3.2 Payments

- (a) Rates - In respect of the provision of Firm Point-to-Point Transmission Service and Conditional Firm Point-to-Point Transmission Service pursuant to this Agreement, Transmission Customer agrees to pay \$1.00 upon commissioning of the Maritime Link, together with such other consideration as provided for in the Formal Agreements.
- (b) Responsibility for Tariffs and Charges - Except in respect of the consideration referenced in **Section 3.2(a)**, Transmission Provider will be responsible for and hold Transmission Customer harmless in respect of all liabilities for any Tariff Charges or other fee or charge related to all Transmission Rights on the Maritime Link, excluding Taxes as and to the extent payable in accordance with **Section 4.1**. For greater clarity, Transmission Customer shall not be responsible for any charges, whether regulatory or otherwise, in respect of the transmission services provided to it by Transmission Provider under this Agreement.

3.3 General Terms and Conditions of Transmission Service

Transmission Provider will provide Firm Point-To-Point Transmission Service and Conditional Firm Point-to-Point Transmission Service over the Maritime Link under the following general terms and conditions of service:

- (a) Transmission Procedures - Transmission Provider shall adopt and post on the Emera OASIS any necessary administrative rules and practices required for the administration of transmission service over the Maritime Link (as developed by the Interconnection Operators Committee pursuant to the Interconnection Operators Agreement, the "**ML Transmission Procedures**") provided that nothing within such ML Transmission Procedures may modify the rights obtained by Transmission Customer pursuant to this Agreement and that the terms of this Agreement shall govern with respect to any ambiguity or conflict between this Agreement and the ML Transmission Procedures.
- (b) Calculation and Posting of ATC and TTC - Transmission Provider shall calculate and post on the Emera OASIS, ATC and TTC over the Maritime Link, using a methodology for assessing ATC and TTC that is in accordance with Good Utility Practice and the ML Transmission Procedures. This methodology shall be posted on the Emera OASIS.
- (c) Metering and Power Factor Correction at Points of Receipt and Points of Delivery
 - (i) **Responsibility for Metering and Communications Equipment**

Transmission Provider shall be responsible for installing and maintaining compatible metering and communications equipment that provides for

accurate accounting of the Energy and Capacity transmitted pursuant to this Agreement and for reliable communication of the information to Transmission Customer. Transmission Provider shall carry out regular testing and inspection of the metering equipment in accordance with the ML Transmission Procedures.

(ii) Measurement

The measurement of Energy and Capacity transmitted by Transmission Provider on behalf of Transmission Customer will be made in accordance with the ML Transmission Procedures.

(iii) Access to Metering Data

Transmission Provider shall ensure that Transmission Customer obtains access to such metering data as is reasonably required to facilitate confirmation of the delivery of Energy and Capacity over the Maritime Link.

- (d) Scheduling of Transmission Service - Scheduling of the Point-to-Point Transmission Services provided by Transmission Provider to Transmission Customer pursuant to this Agreement shall be conducted in accordance with the scheduling process provided for in **Schedule 2**.

(e) Transmission Losses

(i) Responsibility for Transmission Losses

Transmission Customer shall be responsible for Transmission Losses over the Maritime Link for deliveries of Energy pursuant to Point-to-Point Transmission Service reservations under this Agreement.

(ii) Transmission Loss Factors

The applicable Transmission Loss Factor for the Maritime Link shall be established in accordance with **Schedule 1**.

(iii) Testing and Adjustments

Transmission Provider shall test the Maritime Link on a monthly basis to confirm the Transmission Loss Factor based on the most recent 12 month average Transmission Loss Factor. Following each test, the Transmission Loss Factor shall be adjusted to the tested level and applied during the following month. There shall be no retroactive adjustments.

(f) Curtailment of Transmission Service

(i) Curtailment

In the event that a Curtailment on the Maritime Link is required to maintain reliable operation of the Maritime Link or the neighbouring Control Area(s) directly interconnecting to the Maritime Link, Curtailments on the Maritime Link will be made as follows:

- (A) first to any Non-Firm Point-to-Point Transmission Service reservation pursuant to curtailment procedures set forth in **Section 3.3(f)(ii)** and posted on the Emera OASIS;
- (B) thereafter, if required, Curtailment will be made to any Conditional Firm Point-to-Point Transmission Service Reservation consistent with the ML Transmission Procedures; and
- (C) thereafter, if required, Curtailment of all schedules made pursuant to a Firm Point-to-Point Transmission Service reservation will be made on a pro rata, non-discriminatory basis up to the level required to effectively relieve the identified constraint.

In the event that either the NLSO or the NSPSO determines that an electrical emergency exists on any portion of the Maritime Link within its operational control and implements emergency procedures to Curtail Firm Point-to-Point Transmission Service and/or Conditional Firm Point-to-Point Transmission Service, then the applicable System Operator may request Transmission Customer, and Transmission Customer shall undertake reasonable efforts, to reduce Transmission Customer's transmission schedules over the Maritime Link to respond to the electrical emergency. However, the NSPSO and NLSO each reserves the right to Curtail, in whole or in part, any Firm Point-to-Point Transmission Service and/or Conditional Firm Point-to-Point Transmission Service Scheduled under this Agreement when, as operator of the applicable portion of the Maritime Link, an emergency or other unforeseen condition impairs or degrades the reliability of such portion of the Maritime Link as determined in accordance with the Interconnection Operators Agreement. In respect of the portion of the Maritime Link operated by the NSPSO, Transmission Provider will ensure that the NSPSO notifies Transmission Customer in a timely manner of any scheduled Curtailment or need for reduction in Transmission Customer's transmission schedules over the Maritime Link.

(ii) Curtailment or Interruption of Non-Firm Point-to-Point Transmission Service

Transmission Customer acknowledges that the NSPSO and the NLSO reserve the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service for reliability reasons when an emergency or other

unforeseen condition, as determined in accordance with the Interconnection Operators Agreement, threatens to impair or degrade the reliability of the Maritime Link or the neighbouring Control Areas directly interconnected with the Maritime Link.

Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service in order to accommodate (A) a request for Firm Point-to-Point Transmission Service, (B) a request for Conditional Firm Point-to-Point Transmission Service, (C) a request for Non-Firm Point-To-Point Transmission Service of greater duration, or (D) transmission service for Firm Point-to-Point Transmission Service during conditional curtailment periods.

Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Point-to-Point Transmission Service and Conditional Firm Point-to-Point Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (e.g., hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission Provider shall ensure that transmission customers are provided with advance notice of Curtailment or Interruption where such notice can be provided consistent with Good Utility Practice.

Non-Firm Point-To-Point Transmission Service is available on a stand-alone basis for periods ranging from one hour to one month.

(iii) **Reductions in Schedules for Curtailment or Interruption Related to External System Conditions**

In the event that Transmission Provider is notified by the NLSO or NSPSO of an emergency or other unforeseen condition that exists on the NL Transmission System or the NS Transmission System and requires Curtailment of deliveries over the Maritime Link, schedules for transmission service over the Maritime Link shall be reduced or Curtailed consistent with the Curtailment of deliveries required by the applicable System Operator.

- (g) System Reliability - Transmission Provider shall have the right to suspend the delivery of the Point-to-Point Transmission Service provided for under this Agreement without breaching this Agreement or incurring liability to Transmission Customer in the event of a Planned Maintenance Period, a Safety Event or where doing so is required by Good Utility Practice, 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 at a time least

inconvenient to Transmission Customer, acting reasonably. When such Repairs are of a routine nature that can be scheduled in advance, Transmission Provider shall advise Transmission Customer in writing at least two weeks in advance of such work.

(h) Assignment of Transmission Service

(i) Procedures for Assignment or Transfer of Service

Transmission Customer may assign all or a portion of its Firm Point-to-Point Transmission Service or Conditional Firm Point-to-Point Transmission Service under this Agreement to a Transmission Customer Affiliate. Transmission Customer must obtain prior written authorization, which shall not be unreasonably withheld, from Transmission Provider for assignment of its transmission service rights under this Agreement to any other entity. An assignee of Point-to-Point Transmission Service pursuant to this **Section 3.3(h)** shall be described herein as the “Assignee”.

(ii) Nature of Assignment

Transmission Customer may assign use of its Firm Point-to-Point Transmission Service or Conditional Firm Point-to-Point Transmission Service reservation on a firm or non-firm basis and for periods of one or more hours. In the event an assignment or transfer is made on a non-firm basis, the Assignee will exercise its assigned or transferred rights in accordance with the terms applying to Non-Firm Point-to-Point Transmission Service under the ML Transmission Procedures.

(iii) Continued Responsibility for Assignor

Notwithstanding any assignment of rights under this Agreement to an Assignee, Transmission Customer shall remain jointly and severally responsible for the obligations initially assumed by Transmission Customer, as a transmission customer under this Agreement.

(iv) Information on Assignment or Transfer of Service

In accordance with Emera OASIS posting practices and the ML Transmission Procedures, any assignment of transmission reservations under this Agreement shall be posted on the Emera OASIS on or before the date the reassigned service commences.

(v) Posting of Transmission Capacity Available for Assignment or Transfer

Transmission Customer may use the Emera OASIS to post transmission Capacity available for resale.

(vi) Assignment Agreement

As a condition to the approval of any assignment of rights by Transmission Customer to another entity, the Assignee must agree to and execute an assignment agreement by which the Assignee assumes all of Transmission Customer's obligations and liabilities related to the acquisition and use of the transmission reservations obtained pursuant to such assignment.

- (i) Reciprocity - As a condition to receiving Point-to-Point Transmission Service under this Agreement, Transmission Customer agrees to provide to Transmission Provider and its Affiliates comparable transmission service on similar terms and conditions over facilities used for the transmission of Energy in inter-provincial commerce which are owned, controlled or operated by Transmission Customer or Transmission Customer's Affiliates. This reciprocity requirement applies not only to Transmission Customer's receipt of transmission service under this Agreement, but also to all parties to a transaction that involves the use of transmission service under this Agreement, including a power seller, buyer and any intermediary, such as a power marketer.
- (j) Non-Firm Rates - The Parties acknowledge that the rates for any Non-Firm Point-to-Point Transmission Service over the Maritime Link that may be provided to third parties from time to time shall be as approved by the UARB.

3.4 Ancillary Services

The following Ancillary Services may be applicable to the transfer and delivery of Energy and Capacity under this Agreement:

- (a) Scheduling, System Control and Dispatch Service - Transmission Provider shall be responsible for the provision of and payment for the costs of Scheduling, System Control and Dispatch Service, as required to Schedule the transmission of Energy and Capacity over the Maritime Link.
- (b) Reactive Supply and Voltage Control - In order to maintain transmission voltages within acceptable limits on the Maritime Link and its interconnections with the NL Transmission System and the NS Transmission System, the production or absorption of reactive power may be required ("**Reactive Supply and Voltage Control**") in relation to the Scheduling of Energy and Capacity in accordance with this Agreement. Transmission Provider shall be responsible for the provision of and payment for such Reactive Supply and Voltage Control.

3.5 Billing and Payment

- (a) Billing Procedures - To the extent payments are necessary between Transmission Provider and Transmission Customer, within a reasonable time after the first day of each month, Transmission Provider shall submit an invoice to Transmission Customer for any required charges during the preceding month. The invoice shall be

paid by Transmission Customer within 30 days of receipt. All payments shall be made in immediately available funds payable to Transmission Provider, or by wire transfer to a bank named by Transmission Provider.

- (b) Interest on Unpaid Balances - Interest on any unpaid amounts (including amounts placed in escrow) shall bear interest at the Prime Rate plus three percent per annum, from the due date of the bill to the date of payment. When payments are made by mail, bills shall be considered as having been paid on the date of receipt by Transmission Provider.
- (c) Payment During Billing Dispute and Suspension of Service - In the event of a billing dispute between Transmission Provider and Transmission Customer, Transmission Provider will continue to provide transmission service under this Agreement pending resolution of the billing dispute in accordance with this Agreement as long as Transmission Customer (i) continues to make all payments not in dispute and (ii) pays into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Transmission Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide Notice to Transmission Customer of its intention to suspend service in 60 days.

3.6 Records and Audits

Each Party shall keep complete and accurate records and all other data required by it for the purpose of proper administration of this Agreement. Records shall be retained for at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Party to comply with its obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for in the Project NDA. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

3.7 Maritime Link Capacity Expansion

If Emera exercises its option pursuant to Section 2.1(h) of the ML-JDA and develops the Maritime Link with a Capacity in excess of the Capacity provided for in the ML-JDA Basis of Design, but the Parties do not agree upon the commercial terms in regard to the compensation for the Transmission Rights associated with such additional Capacity (the “**Additional Transmission Rights Terms**”) prior to the termination of the ML-JDA, then the following shall apply:

- (a) the Transmission Rights associated with such additional Capacity will be owned by Nalcor; and

- (b) the Parties shall agree upon the Additional Transmission Rights Terms applicable if and when Nalcor uses such Transmission Rights, if not previously agreed, provided however that if the Parties fail to reach agreement the Additional Transmission Rights Terms will be on reasonable commercial terms and the disagreement of the Parties with respect thereto shall be resolved as a Specified Dispute. **Section 1.2(m)** applies to this **Section 3.7(b)**.

**ARTICLE 4
TAXES**

4.1 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 4.1(c)** and the provisions of this Agreement dealing with Government Action:
- (i) except as otherwise provided in the ML-JDA or the JOA (as applicable), Transmission Provider shall pay or cause to be paid all Taxes on or with respect to the Maritime Link;
 - (ii) notwithstanding **Section 4.1(b)(i)**, Transmission Provider shall pay or cause to be paid all NS Taxes on or with respect to the supplies made by the Transmission Provider pursuant to this Agreement (including NS Taxes payable in respect of Tariff Charges applicable to such supplies);
 - (iii) notwithstanding **Section 4.1(b)(i)**, Transmission Customer shall pay or cause to be paid all NL Taxes on or with respect to the supplies made by Transmission Provider pursuant to this Agreement (including NL Taxes payable in respect of Tariff Charges applicable to such supplies);
 - (iv) if Transmission Customer is required by Applicable Law to remit or pay Taxes which are Transmission Provider's responsibility hereunder, Transmission Customer shall first offset the amount of Taxes so recoverable from other amounts owing by it to Transmission Provider under this Agreement, and Transmission Provider shall promptly reimburse Transmission Customer for such Taxes to the extent not so offset;
 - (v) if Transmission Provider is required by Applicable Law to remit or pay Taxes which are Transmission Customer's responsibility hereunder, Transmission Provider shall first offset the amount of Taxes so recoverable from other amounts owing by it to Transmission Customer under this Agreement, and Transmission Customer shall promptly reimburse Transmission Provider for such Taxes to the extent not so offset; and

- (vi) 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 4.1(a)** and **4.1(b)**, the Parties acknowledge and agree that:
- (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to the other Party, such amount shall first be increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
 - (iii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other Party such documentation required pursuant to **Section 4.3**; 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 **Section 4.1(b)** and **4.1(c)** and provisions of this Agreement dealing with Government Action, any New Tax shall be paid by the Party on whom such New Tax is imposed by Applicable Laws.
- (e) Income Taxes and HST - For greater certainty:
- (i) Transmission Provider and its Affiliates are solely responsible for the payment of income Taxes and HST payable by Transmission Provider and its Affiliates, as the case may be; and
 - (ii) Transmission Customer and its Affiliates are solely responsible for the payment of income Taxes and HST payable by Transmission Customer and its Affiliates, as the case may be.

4.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 4.2(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.

4.3 Invoicing

All invoices, as applicable, issued pursuant to **Section 3.5(a)** 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.

4.4 Payment and Offset

- (a) Subject to **Section 4.4(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.

4.5 HST Registration Status and Residency

- (a) Transmission Customer represents and warrants that it is registered for purposes of the HST and that its registration number is 837364611, and undertakes to advise Transmission Provider of any change in its HST registration status or number.

- (b) Transmission Provider represents and warrants that it is registered for purposes of the HST and that its registration number is 868143132, and undertakes to advise Transmission Customer of any change in its HST registration status or number.
- (c) Transmission Customer represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Transmission Provider of any change in its residency status.
- (d) Transmission Provider represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Transmission Customer of any change in its residency status.

4.6 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).

4.7 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 **Section 4.7(a)** through **Section 4.7(c)**.

4.8 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.

4.9 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.

4.10 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 4** 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 4.1(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.

4.11 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.

4.12 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 4**.

ARTICLE 5 FORCE MAJEURE

5.1 Force Majeure

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

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, ice conditions, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) an accident causing material physical damage to, or materially impairing the operation of, or access to, the Maritime Link;
- (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, 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) Government Action of General Application; and
- (g) any "event of Force Majeure", as that term is defined in the NS OATT, with respect to the Maritime Link,

but the following shall not be considered an event of Force Majeure:

- (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) any delay in the settlement of any Dispute; and
- (iv) a Government Action.

5.2 Procedure during Force Majeure

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

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

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

5.3 Notices of Force Majeure

Notwithstanding **Section 5.2(a)** and **Section 15.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a duration of less than 24 hours shall be given to an operational representative of the receiving Party. Each Party shall provide by Notice its telephone and other electronic contact information to the other Party for the purposes of this **Section 5.3** prior to the Commercial Operation Date. Either Party may change such contact information from time to time by giving Notice of such change to the other Party.

ARTICLE 6 TERM AND TERMINATION

6.1 Term

The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall terminate in accordance with **Section 6.2**.

6.2 Termination

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

- (a) the expiry of the Service Life;
- (b) written agreement of the Parties to terminate;
- (c) Nalcor Non-Sanction, as defined in the ML-JDA;
- (d) decision of Nalcor to not sanction any of the LIL, the MFP or the LTA;
- (e) termination pursuant to **Section 6.3**;

- (f) termination pursuant to **Section 7.3**; or
- (g) termination pursuant to **Section 7.6(a)**.

6.3 Extended Force Majeure

- (a) Termination of Agreement - If:
 - (i) Transmission Provider has given Notice under **Section 5.2** of a Force Majeure event which prevents Transmission Provider from providing all of the Point-to-Point Transmission Service in accordance with the provisions of this Agreement;
 - (ii) despite Transmission Provider complying with its obligations under **Section 5.2(c)**, 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 Transmission Provider 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 Transmission Provider 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 **Section 11.1**); and
 - (ii) neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 6.4**.

- (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 15.13**.

ARTICLE 7 DEFAULT AND REMEDIES

7.1 Transmission Provider Events of Default

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

- (a) Transmission Provider 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 Transmission Customer that such amount is due and owing;
- (b) Transmission Provider fails to provide Point-to-Point Transmission Service in accordance with the provisions of this Agreement;
- (c) Transmission Provider is in default or in breach of any term, condition or obligation under this Agreement (other than as described in **Section 7.1(a)** or **7.1(b)**), and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Transmission Provider of Notice thereof from Transmission Customer, unless the cure reasonably requires a longer period and Transmission Provider is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Transmission Customer;
- (d) any representation or warranty made by Transmission Provider in this Agreement is false or misleading in any material respect;
- (e) Transmission Provider 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;
- (f) any Insolvency Event occurs with respect to Transmission Provider; and

- (g) a Government Action occurs.

7.2 Transmission Customer Remedies upon Transmission Provider Event of Default

- (a) General - Upon the occurrence of a Transmission Provider Default and at any time thereafter, provided Transmission Customer 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) Transmission Customer 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 Transmission Customer are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to **Article 10**, Transmission Customer may recover all Losses suffered by Transmission Customer that are due to a Transmission Provider 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 Transmission Customer to recover any amounts owed to Transmission Customer by Transmission Provider under this Agreement. For greater certainty, Transmission Customer's right to damages for a Government Action under this **Section 7.2(b)** is in addition to any rights it may have under **Section 7.6**.
- (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 future Disputes of a similar nature.

7.3 Early Termination Right

If Transmission Provider is in default of its obligations to provide the Point-to-Point Transmission Service in accordance with this Agreement, for any reason other than the occurrence of a Government Action that is governed by **Section 7.6**, and such default is not cured within 24 months after the default of the obligation to provide the Point-to-Point Transmission Service commenced, Transmission Customer, provided it is in material compliance with the provisions of this Agreement, may, at its option, provide Notice to Transmission Provider that it intends to terminate this Agreement. On providing such Notice to Transmission Provider, Transmission Customer shall be entitled to exercise all rights, remedies and recourse as set forth in **Section 7.2** to

recover all Losses arising from the failure of Transmission Provider to provide the Point-to-Point Transmission Service for the Service Term in accordance with the provisions of this Agreement. On payment to Transmission Customer of such Losses, this Agreement shall terminate without further liability of either Party to the other.

7.4 Transmission Customer Events of Default

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

- (a) Transmission Customer 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 Transmission Provider that such amount is due and owing;
- (b) Transmission Customer is in default or in breach of any term, condition or obligation under this Agreement (other than as described in **Section 7.4(a)**), and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Transmission Customer of Notice thereof from Transmission Provider, unless the cure reasonably requires a longer period and Transmission Customer is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Transmission Provider;
- (c) any representation or warranty made by Transmission Customer in this Agreement is false or misleading in any material respect;
- (d) Transmission Customer 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 Transmission Customer; and
- (f) Transmission Customer is in default of its obligations under the Energy and Capacity Agreement and has not cured such default within the time period provided for therein.

7.5 Transmission Provider Remedies upon Transmission Customer Event of Default

- (a) General - Upon the occurrence of a Transmission Customer Default and at any time thereafter, provided Transmission Provider 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) Transmission Provider 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 Transmission Provider are cumulative and may be exercised separately or in combination.

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

- (b) Losses - Subject to **Article 10**, Transmission Provider may recover all Losses suffered by Transmission Provider that are due to a Transmission Customer 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 Transmission Provider to recover any amounts owed to Transmission Provider by Transmission Customer under this Agreement.
- (c) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his, her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to future Disputes of a similar nature.
- (d) Suspension of Point-to-Point Transmission Service
 - (i) If Nalcor is In default, after any applicable cure period, of the provisions of the Energy and Capacity Agreement and is not delivering the Nova Scotia Block in accordance with the provisions of the Energy and Capacity Agreement, Transmission Provider, provided it is material compliance with its obligations under this Agreement, may provide Notice to Transmission Customer that it intends to invoke its rights under this **Section 7.5(d)**. Subject to **Section 7.5(d)(ii)**, if, within 14 days from the delivery of the Notice, the default has not been rectified, Transmission Provider may withhold provision of the Point-to-Point Transmission Service to Transmission Customer and will, for all purposes under this Agreement and all other Formal Agreements, have no liability to Transmission Customer as a result thereof.
 - (ii) Transmission Provider shall not have the option to suspend the provision of the Point-to-Point Transmission Service, or any part thereof, under this Agreement if Nalcor is contesting the default under the Energy and Capacity Agreement as a dispute and the matter has not been determined in accordance with the dispute resolution procedure provided for in the Energy and Capacity Agreement.
 - (iii) Once the default under the Energy and Capacity Agreement has been rectified and any damages due to Emera have been satisfied in full, Transmission Provider shall resume provision of the Point-to-Point

Transmission Service to Transmission Customer in accordance with this Agreement.

- (iv) This **Section 7.5(d)** shall be Transmission Provider's sole and exclusive right, remedy and recourse under this Agreement with respect to a default by Transmission Customer under **Section 7.4(f)**.

7.6 Government Action

- (a) **Termination Right** - If a Government Action occurs, and such Government Action causes Transmission Customer to be deprived of all or substantially all of the delivery or enjoyment of, or access to, the Firm Point-to-Point Transmission Service or the Conditional Firm Point-to-Point Transmission Service provided for under this Agreement, Transmission Customer may, on 30 days' Notice, terminate this Agreement, and Transmission Provider shall, subject to **Section 7.6(b)**, pay to Transmission Customer the amount of all Losses of Transmission Customer or an Affiliate of Transmission Customer, as the case may be, arising or incurred due to the Government Action.
- (b) **Adjustment for Compensation Paid by NS** - The Losses payable to Transmission Customer as a result of the occurrence of a Government Action shall be net of any compensation paid to Transmission Customer by NS as part of the Government Action or as a result of the Government Action. There is no obligation on the Transmission Customer to exercise its rights against NS under the Inter-Provincial Agreement, or otherwise, prior to exercising its rights under this Agreement, or at all, in order to exercise its rights against the Transmission Provider under this Agreement.
- (c) **Sole Right, Remedy and Recourse** - If Transmission Customer elects to terminate this Agreement pursuant to **Section 7.6(a)**, the sole and exclusive right, remedy and recourse of Transmission Customer under this Agreement for the Government Action shall be pursuant to this **Section 7.6**, and payment to Transmission Customer by Transmission Provider and/or NS of the amount of the Losses as set forth in this **Section 7.6** will constitute full and final satisfaction of all amounts that may be claimed by Transmission Customer for and in respect of this Agreement, including the Government Action. Upon such payment to Transmission Customer, Transmission Provider will be released and forever discharged from any and all liability in respect of this Agreement, including the Government Action.
- (d) **Dispute Resolution for Government Action** - If Transmission Provider contests whether a Government Action has occurred, the impact on Transmission Customer of such Government Action or the amount of the Losses being claimed by Transmission Customer, the remedies of Transmission Customer 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.

7.7 Equitable Relief

Nothing in this **Article 7** will limit or prevent either Party from seeking equitable relief, including specific performance or a declaration to enforce the other Party's obligations under this Agreement.

7.8 Other Rights

This **Article 7** does not affect any right, remedy or recourse available under the Inter-Provincial Agreement or the Energy and Capacity Agreement.

**ARTICLE 8
PERMITS, LICENCES AND APPLICABLE LAW**

8.1 Licences and Compliance with Law

- (a) The Parties shall each be responsible for obtaining and maintaining any required 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 9
LIABILITY AND INDEMNITY**

9.1 Transmission Customer Indemnity

Transmission Customer shall indemnify, defend, reimburse, release and save harmless Transmission Provider 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 "**Transmission Provider 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 Transmission Provider 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 Transmission Customer Group occurring in connection with, incidental to or resulting from Transmission Customer's obligations under this Agreement.

9.2 Transmission Provider Indemnity

Transmission Provider shall indemnify, defend, reimburse, release and save harmless Transmission Customer 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 "**Transmission Customer 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 Transmission Customer 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 Transmission Provider Group occurring in connection with, incidental to or resulting from Transmission Provider's obligations under this Agreement.

9.3 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 Transmission Customer Group, such property of such member of the Transmission Customer Group, and, with respect to any member of the Transmission Provider Group, such property of such member of the Transmission Provider Group), howsoever incurred.

9.4 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 9.1** or **9.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 9.4**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 9.4** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by

it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 9.4(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 9.4** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

9.5 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 10 LIMITATION OF DAMAGES

10.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 9** and **Article 10** of this Agreement shall apply to any and all Claims.

10.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Transmission Customer or any other member of the Transmission Customer Group be liable to Transmission Provider or any other member of the Transmission Provider Group, nor shall Transmission Provider or any member of the Transmission Provider Group be liable to Transmission Customer or any member of the Transmission Customer Group, for a decline in market capitalization, 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 Transmission Customer Group or the Transmission Provider Group, as the case may be, with respect to matters relating to this Agreement, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 10.2**. For the purposes of this **Section 10.2**, lost revenues or profits 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.

10.3 Liquidated Damages

To the extent that any damages required to be paid under this Agreement are expressly stated to be liquidated damages, the Parties have computed, estimated and agreed upon the amount of such damages as a reasonable forecast of anticipated or actual Losses in view of the difficulty in calculating or determining the consequences of the harm or the amount of the Losses. The Parties agree that such liquidated damages are a genuine pre-estimate of damages, are not a penalty, and are intended to protect both Parties from uncertainties. The obligation of a Party to pay, and the other Party to accept such amount, as applicable, shall be legally enforceable and binding upon the Parties.

10.4 Insurance Proceeds

Except as expressly set forth in this Agreement, a Claim 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.

10.5 Double Recovery

Any damages due to Transmission Customer under this Agreement shall be calculated so as to not allow double recovery of damages with respect to the failure to transmit, schedule or dispatch the same Energy of Transmission Customer under the NS Transmission Utilization Agreement, the New Brunswick Transmission Utilization Agreement or the MEPCO Transmission Rights Agreement.

10.6 No Breakage or Other Similar Financing Costs Permitted

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

ARTICLE 11 CONFIDENTIALITY

11.1 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.

11.2 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 12 ASSIGNMENT AND CHANGE OF CONTROL

12.1 Transmission Customer Assignment Rights

- (a) General - Transmission Customer 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 “**Transmission Customer Rights**”), without the prior written consent of Transmission Provider, which consent may be arbitrarily withheld, except that, at any time and from time to time, Transmission Customer, without such consent, shall be entitled to assign all or any portion of its interest in the Transmission Customer Rights to an Affiliate or Affiliates of Transmission Customer, provided that Transmission Customer enters into an agreement with Transmission Provider substantially in the form attached hereto as **Schedule 4**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Transmission Customer Rights by Transmission Customer unless Transmission Customer 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 Transmission Customer Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Transmission Customer Affiliate Assignee that would result in such Transmission Customer Affiliate Assignee no longer being an Affiliate of Transmission Customer will be deemed to be an assignment of Transmission Customer Rights requiring the prior written consent of Transmission Provider pursuant to **Section 12.1(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 12.1** will be null and void.

12.2 Transmission Provider Assignment Rights

- (a) General - Transmission Provider 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 “**Transmission Provider Rights**”) without the prior written consent of Transmission Customer, which consent may be arbitrarily withheld, except that, at any time and from time to time, Transmission Provider, without such consent, shall be entitled to assign all or any portion of its interest in

the Transmission Provider Rights to an Affiliate or Affiliates of Transmission Provider, provided that Transmission Provider enters into an agreement with Transmission Customer substantially in the form attached hereto as **Schedule 4**.

- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Transmission Provider Rights by Transmission Provider unless Transmission Provider 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 Transmission Provider Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Transmission Provider Affiliate Assignee that would result in such Transmission Provider Affiliate Assignee no longer being an Affiliate of Transmission Provider will be deemed to be an assignment of Transmission Provider Rights requiring the prior written consent of Transmission Customer pursuant to **Section 12.2(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 12.2** will be null and void.
- (e) Mandatory Assignment - Upon acquisition of ownership of the Maritime Link by Transmission Customer or an Affiliate of Transmission Customer, Transmission Provider shall assign this Agreement to Transmission Customer or to an Affiliate of Transmission Customer designated by Transmission Customer, provided that upon such assignment, the party taking assignment of this Agreement shall assume all obligations and liabilities arising in its capacity as the transmission provider under this Agreement, as of and following the time of the assignment.

12.3 **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)** applies to this **Section 12.3**.

ARTICLE 13 DISPUTE RESOLUTION

13.1 **General**

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 3** (the "**Dispute Resolution Procedure**").

- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 13**, without prejudice to either Party's rights pursuant to this Agreement.

13.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the "**Claiming Party**") intending to assert a Claim against the other Party (the "**Recipient Party**") shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party's failure to promptly give Notice to the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.
- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES

14.1 Transmission Customer Representations and Warranties

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

14.2 Transmission Provider Representations and Warranties

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

**ARTICLE 15
MISCELLANEOUS PROVISIONS**

15.1 Notices

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

To Transmission Provider:

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

To Transmission Customer:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Vice-President, Business Development and Strategic Planning
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

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

15.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof (including the 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.

15.3 **Counterparts**

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

15.4 **Expenses of Parties**

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

15.5 **Announcements**

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

15.6 **Relationship of the Parties**

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

15.7 **Further Assurances**

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

15.8 **Severability**

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

enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

15.9 **Time of the Essence**

Time shall be of the essence.

15.10 **Amendments**

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

15.11 **No Waiver**

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

15.12 **No Third Party Beneficiaries**

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

15.13 **Survival**

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

15.14 **Waiver of Sovereign Immunity**

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other

proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

15.15 Successors and Assigns

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


15.16 Capacity of Nalcor

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


[Remainder of this page intentionally left blank.]

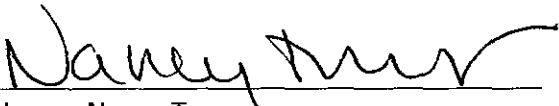
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

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


Name: Peter Doig

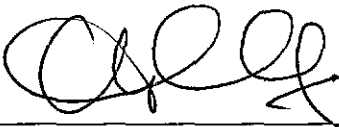
EMERA INC.

By: 
Name: Chris Huskisson
Title: President and Chief Executive Officer

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

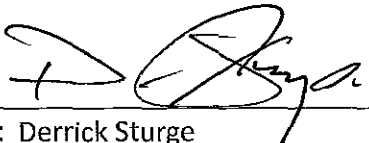
We have authority to bind the company.

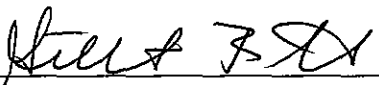
Executed and delivered by Nalcor Energy,
in the presence of:


Name: Rob Hull

NALCOR ENERGY

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

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

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

We have authority to bind the corporation.

**MARITIME LINK (NALCOR)
TRANSMISSION SERVICE AGREEMENT**

SCHEDULE 1

CALCULATION OF MARITIME LINK TRANSMISSION LOSSES

CALCULATION OF MARITIME LINK TRANSMISSION LOSSES

1.0 Calculating Monthly Transmission Losses

In order to determine the amount of Energy to be delivered by the Transmission Provider to the Point of Delivery, a transmission loss factor will be applied, in accordance with **Section 2.0**, to the Transmission Customer's hourly Energy that is Scheduled to be provided at the Point of Receipt. The transmission loss factor to be applied will be determined each month as described in this Schedule (the "Transmission Loss Factor").

The Transmission Loss Factor to be applied in each month will be calculated in accordance with **Section 3.0**, using actual transmission losses, Energy receipts and Energy deliveries on the Maritime Link by all transmission customers using the Maritime Link during the 12 month period ending immediately prior to the calendar month preceding such month (the "Reference Period").

However, if during a period when there is no Curtailment in effect, the application of the Transmission Loss Factor results in more Energy and Capacity being scheduled for delivery across the Maritime Link than the Maritime Link is capable of transmitting due to there being more transmission losses than the Transmission Loss Factor calculation provides for, the Transmission Loss Factor to be applied in accordance with **Section 2.0** shall be adjusted upward for all transmission customers' Energy that is Scheduled to be provided at the Point of Receipt during such period to the extent necessary to result in the total of all Energy and Capacity being transmitted across the Maritime Link being equal to the capability of the Maritime Link. For greater certainty, the foregoing loss factor adjustment will result in all transmission customers that are taking service over the Maritime Link during such period providing their proportionate share of the actual transmission losses.

2.0 Application of the Loss Factor

The transmission losses applicable to each transmission customer's Energy that is Scheduled to be provided at the Point of Receipt will be calculated as follows:

Energy delivered to the Point of Delivery = Energy received at the Point of Receipt x (1-MLLSF)
measured in MW

where: MLLSF = Transmission Loss Factor.

3.0 Maritime Link Loss Factor Calculation

The Transmission Loss Factor to be applied to the transmission customers' Energy that is Scheduled at the Point of Receipt in each hour of the month will, subject to paragraph (b), be calculated from actual metered Energy received at the Point of Receipt and actual metered Energy delivered to the Point of Delivery during the Reference Period, as follows:

- (a) the Transmission Loss Factor shall be the ratio of the Maritime Link transmission losses during the Reference Period to the Energy metered on the Maritime Link at the Point of Receipt during the Reference Period; and
- (b) The Transmission Loss Factor to be applied during the first 13 months of delivery of the Energy over the Maritime Link shall be based upon the methodology described in (a), 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 all transmission service agreements in respect of the Maritime Link.

4.0 Maritime Link Losses Determination

The Maritime Link losses are all metered Energy losses, being the difference between all metered Energy received at the Point of Receipt and all metered Energy delivered to the Point of Delivery.

5.0 Metering

There shall be metering at each of the following locations so as to accurately determine the Transmission Losses:

1. Point of Receipt; and
2. Point of Delivery.

There will be appropriate adjustments made for metering installed on the low voltage side of transformers. The meters will be read at least monthly in accordance with the ML Transmission Procedures.

6.0 Disputes

Any Dispute relating to the determination of Transmission Losses applicable to the Transmission Customer's Energy pursuant to this **Schedule 1** shall be a Specified Dispute.

**MARITIME LINK (NALCOR)
TRANSMISSION SERVICE AGREEMENT**

SCHEDULE 2

MARITIME LINK SCHEDULING PROCESS

MARITIME LINK SCHEDULING PROCESS

Prior to the Commercial Operation Date, the Parties will negotiate in good faith to finalize the Scheduling process applicable to the provision of Firm Point-to-Point Transmission Service and Conditional Firm Point-to-Point Transmission Service by Transmission Provider to Transmission Customer pursuant to this Agreement, and upon doing so, shall amend this Schedule by replacing the existing text of this **Schedule 2** with a description of the agreed Scheduling process. Any Dispute arising under this **Schedule 2** shall be a Specified Dispute. **Section 1.2(m)** of the Agreement applies to this paragraph.

**MARITIME LINK (NALCOR)
TRANSMISSION SERVICE AGREEMENT**

SCHEDULE 3

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

SECTION 1 – INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- “Mediation Notice”** has the meaning set forth in **Section 4.1(a)**;
- “Mediation Procedure”** means the provisions of **Section 4**;
- “Mediation Response”** has the meaning set forth in **Section 4.1(d)**;
- “Mediator”** means the mediator appointed pursuant to the Mediation Procedure;
- “Negotiation Procedure”** means the provisions of **Section 3**;
- “Non-Consent to Arbitration”** means, with respect to an Arbitration Notice, a Notice given by the Notified Party to the Notifying Party stating that the Notified Party does not consent to arbitration of the Dispute referred to in the Arbitration Notice;
- “Notified Party”** has the meaning set forth in **Section 5.1(a)**;
- “Notifying Party”** has the meaning set forth in **Section 5.1(a)**;
- “Referral Notice”** has the meaning set forth in **Section 6.1**;
- “Referring Party”** has the meaning set forth in **Section 6.1**;
- “Requesting Party”** has the meaning set forth in **Section 4.1(a)**;
- “Responding Party”** has the meaning set forth in **Section 6.1**;
- “Response”** has the meaning set forth in **Section 6.9(b)**;
- “Review Notice”** has the meaning set forth in **Section 3.1**;
- “Specified Dispute”** means a Dispute required to be finally resolved by expert determination and specified as such in the Articles of Agreement;
- “Submission”** has the meaning set forth in **Section 6.9(a)**;
- “Terms of Reference”** has the meaning set forth in **Section 6.4**; and
- “Tribunal”** means either a single Arbitrator or a panel of Arbitrators, as the case may be, appointed pursuant to the Arbitration Procedure to serve as the arbitrator or arbitrators of a General Dispute.

1.2 Section References

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

1.3 Appendix

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

Appendix A - *Commercial Arbitration Code (Canada)*

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 Purpose and Sequence of Dispute Resolution

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

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

2.2 Confidentiality

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

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

2.3 Interim Measures

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

2.4 Parties to Proceedings

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

2.5 Mediator or Arbitrator as Witness

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

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

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

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

3.2 Reservation of Rights

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

3.3 Failure of Negotiations

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

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

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

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

4.2 Appointment of Mediator

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

4.3 Mediation Process

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

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

4.4 Reservation of Rights

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

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

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

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

5.2 Provisions Relating to the Arbitration Act and the Code

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

5.3 Appointment of Tribunal

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

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

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

5.4 Arbitration by Single Arbitrator

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

5.5 Procedure

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

5.6 Awards

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

5.7 Settlement

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

SECTION 6 – EXPERT DETERMINATION PROCEDURE

6.1 Referral for Expert Determination

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

6.2 Qualifications of Independent Expert

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

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

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

6.3 Selection of the Independent Expert

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

6.4 Terms of Reference

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

6.5 Information Provided to Independent Expert

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

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

6.6 Dispute Context

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

6.7 No ex parte Communication

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

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

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

6.8 Initial Meeting and Joint Presentations by the Parties

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

6.9 Written Submissions and Responses

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

6.10 Independent Expert Clarifications

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

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

6.11 **Method of Evaluation**

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

6.12 **Decision and Presentation of Report**

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

6.13 **Costs of Expert Determination**

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

6.14 **Effect of Determination**

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

6.15 **Settlement**

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

**Appendix A
to Dispute Resolution Procedure**

COMMERCIAL ARBITRATION CODE

Appendix A COMMERCIAL ARBITRATION CODE

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

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

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

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

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

(1) This *Code* applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.

(2) The provisions of this *Code*, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.

(3) This *Code* shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this *Code*.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this *Code*:

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this *Code*, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this *Code* refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this *Code*, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

**ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS**

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

**ARTICLE 4
WAIVER OF RIGHT TO OBJECT**

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

**ARTICLE 5
EXTENT OF COURT INTERVENTION**

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

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

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

CHAPTER II. ARBITRATION AGREEMENT

**ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT**

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

**ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT**

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

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

**ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT**

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

**ARTICLE 10
NUMBER OF ARBITRATORS**

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

**ARTICLE 11
APPOINTMENT OF ARBITRATORS**

- (1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.
- (2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.
- (3) Failing such agreement,
 - (a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;
 - (b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.
- (4) Where, under an appointment procedure agreed upon by the parties,
 - (c) a party fails to act as required under such procedure, or
 - (d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

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

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

ARTICLE 12 GROUNDS FOR CHALLENGE

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

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

ARTICLE 13 CHALLENGE PROCEDURE

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

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

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

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

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

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

ARTICLE 15
APPOINTMENT OF SUBSTITUTE ARBITRATOR

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

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

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

(3) The arbitral tribunal may rule on a plea referred to in paragraph (2) of this article either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party may request, within thirty days after having received notice of that ruling, the court specified in article 6 to decide the matter, which decision shall be subject to no appeal; while such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

ARTICLE 17
POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute. The arbitral tribunal may require any party to provide appropriate security in connection with such measure.

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18
EQUAL TREATMENT OF PARTIES

The parties shall be treated with equality and each party shall be given a full opportunity of presenting his case.

**ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE**

(1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

**ARTICLE 20
PLACE OF ARBITRATION**

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

**ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS**

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

**ARTICLE 22
LANGUAGE**

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

**ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE**

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

**ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS**

(1) Subject to any contrary agreement by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. However, unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(2) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property or documents.

(3) All statements, documents or other information supplied to the arbitral tribunal by one party shall be communicated to the other party. Also any expert report or evidentiary document on which the arbitral tribunal may rely in making its decision shall be communicated to the parties.

**ARTICLE 25
DEFAULT OF A PARTY**

Unless otherwise agreed by the parties, if, without showing sufficient cause,

(a) the claimant fails to communicate his statement of claim in accordance with article 23(1), the arbitral tribunal shall terminate the proceedings;

(b) the respondent fails to communicate his statement of defence in accordance with article 23(1), the arbitral tribunal shall continue the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(c) any party fails to appear at a hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the award on the evidence before it.

**ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL**

(1) Unless otherwise agreed by the parties, the arbitral tribunal

(a) may appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(b) may require a party to give the expert any relevant information or to produce, or to provide access to, any relevant documents, goods or other property for his inspection.

(2) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in a hearing where the parties have the opportunity to put questions to him and to present expert witnesses in order to testify on the points at issue.

**ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE**

The arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of *Canada* assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence.

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28 RULES APPLICABLE TO SUBSTANCE OF DISPUTE

(1) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given State shall be construed, unless otherwise expressed, as directly referring to the substantive law of that State and not to its conflict of laws rules.

(2) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(3) The arbitral tribunal shall decide *ex aequo et bono* or as *amiable compositeur* only if the parties have expressly authorized it to do so.

(4) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

ARTICLE 29 DECISION-MAKING BY PANEL OF ARBITRATORS

In arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made, unless otherwise agreed by the parties, by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if so authorized by the parties or all members of the arbitral tribunal.

ARTICLE 30 SETTLEMENT

(1) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(2) An award on agreed terms shall be made in accordance with the provisions of article 31 and shall state that it is an award. Such an award has the same status and effect as any other award on the merits of the case.

ARTICLE 31 FORM AND CONTENTS OF AWARD

(1) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signature of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(2) The award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given or the award is an award on agreed terms under article 30.

(3) The award shall state its date and the place of arbitration as determined in accordance with article 20(1). The award shall be deemed to have been made at that place.

(4) After the award is made, a copy signed by the arbitrators in accordance with paragraph (1) of this article shall be delivered to each party.

**ARTICLE 32
TERMINATION OF PROCEEDINGS**

- (1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.
- (2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:
 - (a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;
 - (b) the parties agree on the termination of the proceedings;
 - (c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.
- (3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

**ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD**

- (1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:
 - (a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;
 - (b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers the request to be justified, it shall make the correction or give the interpretation within thirty days of receipt of the request. The interpretation shall form part of the award.

- (2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.
- (3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.
- (4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.
- (5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

- (1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.
- (2) An arbitral award may be set aside by the court specified in article 6 only if:
 - (a) the party making the application furnishes proof that:
 - (i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of *Canada*; or
 - (ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
 - (iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or
 - (iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code*; or
 - (b) the court finds that:
 - (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or
 - (ii) the award is in conflict with the public policy of *Canada*.
- (3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.
- (4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

- (1) An arbitral award, irrespective of the country in which it was made, shall be recognized as binding and, upon application in writing to the competent court, shall be enforced subject to the provisions of this article and of article 36.

(2) The party relying on an award or applying for its enforcement shall supply the duly authenticated original award or a duly certified copy thereof, and the original arbitration agreement referred to in article 7 or a duly certified copy thereof. If the award or agreement is not made in an official language of *Canada*, the party shall supply a duly certified translation thereof into such language.

ARTICLE 36
GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(b) if the court finds that:

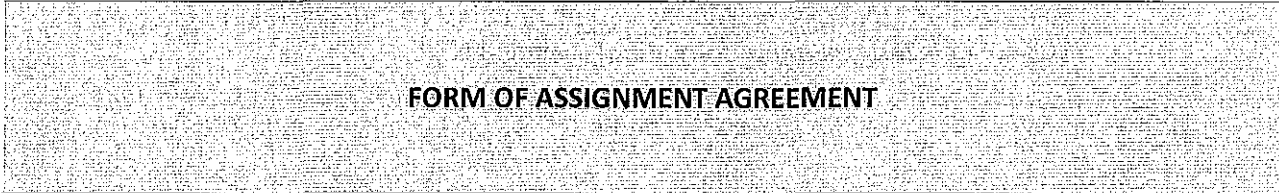
(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of *Canada*; or

(ii) the recognition or enforcement of the award would be contrary to the public policy of *Canada*.

(2) If an application for setting aside or suspension of an award has been made to a court referred to in paragraph (1)(a) (v) of this article, the court where recognition or enforcement is sought may, if it considers it proper, adjourn its decision and may also, on the application of the party claiming recognition or enforcement of the award, order the other party to provide appropriate security.

**MARITIME LINK (NALCOR)
TRANSMISSION SERVICE AGREEMENT**

SCHEDULE 4



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 acknowledge and agree 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]

**MARITIME LINK (NALCOR)
TRANSMISSION SERVICE AGREEMENT**

SCHEDULE 5

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