

NALCOR ENERGY

and

EMERA INC.

MEPCO TRANSMISSION RIGHTS AGREEMENT

July 31, 2012

TABLE OF CONTENTS

ARTICLE 1 INTERPRETATION..... 1

1.1 Definitions1

1.2 Construction of Agreement10

1.3 Conflicts between Parts of Agreement12

1.4 Applicable Law and Submission to Jurisdiction.....12

1.5 Schedules.....12

ARTICLE 2 MEPCO TRANSMISSION RIGHTS AND SALE OF ENERGY AND CAPACITY 13

2.1 MEPCO Rights13

2.2 Renewal of MEPCO Rights13

2.3 Nalcor’s Right to Direct Emera13

2.4 Absolute Assignment of MEPCO Transmission Rights13

2.5 Nalcor Right to Sell to Emera.....14

2.6 Energy and Capacity Pricing14

2.7 Scheduling15

2.8 Conditions on Emera Payments15

2.9 Notices and Communications.....16

2.10 ISO-NE Tariff Charges – Assignments for Fixed Periods16

2.11 Measurement16

ARTICLE 3 INTERACTION OF TARIFF AND AGREEMENT 16

3.1 Parties to Comply with ISO-NE Tariff.....16

ARTICLE 4 NON-EXCLUSIVITY 17

4.1 Parties in Competition.....17

ARTICLE 5 PERMITS, LICENCES AND APPLICABLE LAW 17

5.1 Licences and Compliance with Law17

ARTICLE 6 INVOICING AND PAYMENT 18

6.1 Invoices18

6.2 Disputed Amounts18

6.3 Time and Method of Payment.....18

6.4 Effect of Payment18

6.5 Resolution of Objections18

6.6 Overpayments19

6.7 Interest on Overdue Amounts.....19

6.8 Waiver of Unbilled Charges19

6.9 Records and Audits.....19

ARTICLE 7 TAXES..... 20

7.1 Supplies and Payments Exclusive of Taxes.....20

7.2 Determination of Value for Tax Compliance Purposes21

7.3 Invoicing.....22

7.4 Payment and Offset.....22

7.5 HST Registration Status and Residency22

7.6 Cooperation to Minimize Taxes.....23

7.7 Additional Tax Disclosure23

7.8 Prohibited Tax Disclosure23

7.9 Withholding Tax.....24

7.10 Tax Indemnity24

7.11 Additional Tax Indemnity24

7.12 Assignment – Tax Requirements25

ARTICLE 8 TERM AND TERMINATION 25

8.1 Term.....25

8.2 Termination of Agreement.....25

8.3 Extended Force Majeure26

8.4 Effect of Termination.....27

ARTICLE 9 SUSPENSION DURING CROSS-DEFAULT 27

9.1 Suspension During Cross-Default27

ARTICLE 10 DEFAULT AND REMEDIES 28

10.1 Emera Events of Default.....28

10.2 Nalcor Remedies upon Emera Event of Default.....29

10.3 Nalcor Events of Default.....30

10.4 Emera Remedies upon Nalcor Event of Default.....31

ARTICLE 11 FORCE MAJEURE..... 31

11.1 Force Majeure31

ARTICLE 12 LIABILITY AND INDEMNITY..... 32

12.1 Nalcor Indemnity32

12.2 Emera Indemnity33

12.3 Indemnification Procedure.....33

12.4 Insurer Approval35

ARTICLE 13 LIMITATION OF DAMAGES 35

13.1 Limitations and Indemnities Effective Regardless of Cause of Damages.....35

13.2 No Consequential Loss35

13.3	Liquidated Damages	36
13.4	Insurance Proceeds	36
13.5	Double Recovery.....	36
13.6	No Breakage or other similar Financing Costs Permitted	36
ARTICLE 14 CONFIDENTIALITY		36
14.1	Incorporation of Project NDA.....	36
14.2	Disclosure of Agreement	37
ARTICLE 15 ASSIGNMENT AND CHANGE OF CONTROL		37
15.1	Nalcor Assignment Rights.....	37
15.2	Nalcor Rights Otherwise Not Assignable.....	37
15.3	Emera Assignment Rights	38
ARTICLE 16 DISPUTE RESOLUTION.....		38
16.1	General	38
16.2	Procedure for Inter-Party Claims.....	38
ARTICLE 17 REPRESENTATIONS, WARRANTIES AND COVENANTS.....		39
17.1	Nalcor Representations and Warranties.....	39
17.2	Emera Representations and Warranties	40
17.3	Emera Covenants.....	41
ARTICLE 18 MISCELLANEOUS PROVISIONS.....		42
18.1	Notices	42
18.2	Prior Agreements.....	43
18.3	Counterparts.....	43
18.4	Expenses of Parties.....	43
18.5	Announcements	43
18.6	Relationship of the Parties	44
18.7	Further Assurances	44
18.8	Severability	44
18.9	Time of the Essence	44
18.10	Amendments	44
18.11	No Waiver	44
18.12	No Third Party Beneficiaries	45
18.13	Survival	45
18.14	Waiver of Sovereign Immunity.....	45
18.15	Successors and Assigns.....	45
18.16	Capacity of Nalcor.....	45

Schedules:

- Schedule 1 - Scheduling Protocol
- Schedule 2 - Form of Assignment Agreement
- Schedule 3 - Dispute Resolution Procedure
- Schedule 4 - Formal Agreements

MEPCO TRANSMISSION RIGHTS AGREEMENT

THIS MEPCO TRANSMISSION RIGHTS AGREEMENT is made effective the 31st day of July, 2012 (the "Effective Date")

BETWEEN:

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

- and -

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

WHEREAS:

- A. the Parties have entered into a term sheet dated November 18, 2010 (the "**Term Sheet**") confirming their common understanding of the purpose, process and timing for 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 and provides for the use by Nalcor of the MEPCO Transmission Rights for 50 years;

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:

"**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 MEPCO Transmission Rights Agreement including all Schedules, as it may be modified, amended, supplemented or restated by written agreement between the Parties;

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

“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;

“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;

“Cash Call” has the meaning set forth in the NLDA;

“Claiming Party” has the meaning set forth in **Section 16.2(a)**;

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

“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);

"Cross Default" has the meaning set forth in **Section 9.1(a)**;

"Cross Default Amount" has the meaning set forth in **Section 9.1(a)**;

"Daily MEPCO Charge" means, for any day during a given month, the quotient obtained by dividing the per MW amount paid in such month by Emera pursuant to the MEPCO Grandfathered Transmission Service Agreements for the MEPCO Transmission Rights by the number of days in such month. As of the Effective Date, the Daily MEPCO Charge, based upon a month with 30 days, is calculated to be \$8.33/MW;

"Delivery Point" means the point of interconnection of the Maritime Link and the NS Transmission System at the 345 kV side of the HVdc converter transformers at Woodbine, NS;

"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 16.1**;

"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 Affiliate Assignee" means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 15.3**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

"Emera Default" has the meaning set forth in **Section 10.1**;

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

"Emera Rights" has the meaning set forth in **Section 15.3(a)**;

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

"Energy and Capacity Agreement" means the agreement of even date herewith between Emera and Nalcor providing for the purchase by Emera and the sale by Nalcor of the Nova Scotia Block as therein defined;

"Equivalent Rights" means Transmission Rights that are equivalent to the MEPCO Transmission Rights in all material respects including in respect of duration, scheduling,

interruption and curtailment, renewal and roll-over, point of delivery, point of receipt, and Energy and Capacity amounts;

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

“Extended Force Majeure Period” has the meaning set forth in **Section 8.3(a)(ii)**;

“First Commercial Power” means:

- (a) if both Parties sanction the ML as contemplated by the ML-JDA, “First Commercial Power” as set forth in the Energy and Capacity Agreement;
- (b) if Emera does not sanction the ML and the Parties enter into the PPA Option Arrangements, the date upon which Nalcor commences delivery of the Nova Scotia Block in accordance with the PPA Option Arrangements; or
- (c) if neither Nalcor nor Emera sanction the ML but Emera maintains its investment in the Labrador-Island Link Limited Partnership, LIL First Commercial Power;

“Force Majeure” has the meaning of “event of Force Majeure” set forth in the ISO-NE Tariff, subject to the qualifications set forth in **Section 11.1**;

“Formal Agreements” means the agreements listed in **Schedule 4**;

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

“ISO-NE” means ISO New England Inc. or any successor system operator with responsibility for operating the bulk energy transmission system in New England;

“ISO-NE Tariff” means the Transmission, Markets and Services Tariff issued by the ISO-NE, as it may be amended, reissued, restated or replaced from time to time;

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

“Indemnified Party” has the meaning set forth in **Section 12.3(a)**;

“Indemnitor” has the meaning set forth in **Section 12.3(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;

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

“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;

“LIL First Commercial Power” means the date following commissioning of the Labrador-Island Link within the meaning of “Commissioning” under the NLDA upon which Nalcor or an Affiliate of Nalcor commences providing transmission service by delivering Energy and Capacity from Labrador to the Island Interconnected System using the Labrador-Island Link;

“LIL LP Agreement” means an agreement of even date herewith between Labrador-Island Link General Partner Corporation, as general partner, and Labrador-Island Link Holding Corporation, as limited partner, providing for the establishment and operation of the Labrador-Island Link Limited Partnership;

“LIL Sanction” has the meaning set forth in the NLDA;

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

“Labrador-Island Link Limited Partnership” means the limited partnership formed pursuant to the *Limited Partnership Act* (NL) by the delivery to the NL Registry of Limited Partnerships of a certificate signed by Labrador-Island Link General Partner Corporation and Labrador-Island Link Holding Corporation in accordance with the LIL LP Agreement;

“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;

“MEPCO” means the Maine Electric Power Company, Inc., including its successors;

“MEPCO Grandfathered Transmission Service Agreements” means, collectively, the two MEPCO grandfathered transmission service agreements identified as TSA-MEPCO-4-1 and TSA-MEPCO-4-2 at Attachment H to Section II of the ISO-NE Tariff;

“MEPCO Transmission Rights” means the Transmission Rights associated with the MEPCO Grandfathered Transmission Service Agreements, including any renewal rights, roll-over rights and subsequent extensions thereof;

“MW” means megawatt;

“MWh” means MW hours;

"Maritime Link" or "ML" means the transmission facilities to be constructed between the Island Interconnected System and the NS Transmission System in accordance with the ML-JDA;

"Maritime Link Joint Development Agreement" or "ML-JDA" means the agreement of even date herewith between Nalcor and Emera relating to the development of the Maritime Link;

"Maritime Link (Nalcor) Transmission Service Agreement" means the agreement of even date herewith between Emera and Nalcor for the provision of point-to-point transmission service by Emera to Nalcor for the delivery of Energy and Capacity other than the Nova Scotia Block over the Maritime Link;

"NB" means the Province of New Brunswick;

"NB-Maine Border" means the point of interconnection in Canada closest to the border between NB and Maine where the NB bulk energy transmission system connects to the bulk energy transmission system of MEPCO, Inc. or its successor;

"NL" means the Province of Newfoundland and Labrador;

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

"NS" means the Province of Nova Scotia;

"NS Transmission System" means the bulk energy transmission system in NS;

"NS Transmission Utilization Agreement" means the agreement of even date herewith between Emera and Nalcor relating to the provision of Transmission Rights by Emera to Nalcor through NS;

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

"Nalcor Affiliate Assignee" means an Affiliate of Nalcor to which all or any portion of the Nalcor Rights have been assigned in accordance with **Section 15.1(a)**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

"Nalcor Default" has the meaning set forth in **Section 10.3**;

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

"Nalcor Rights" has the meaning set forth in **Section 15.1(a)**;

"Newfoundland and Labrador Development Agreement" or "NLDA" means the agreement of even date herewith among Nalcor, Emera and other parties relating to, among other things, the Labrador-Island Link;

“New Brunswick Transmission Utilization Agreement” means the agreement of even date herewith between Nalcor and Emera providing for the use by Nalcor of Transmission Rights in NB;

“New Taxes” means:

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

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

“Nova Scotia Block” has the meaning set forth in the Energy and Capacity Agreement or, if the PPA Option Arrangements are entered into, means the Energy delivered by Nalcor to Emera pursuant to the PPA Option Arrangements;

“PPA Option Arrangements” has the meaning set forth in the ML-JDA;

“PUB” means the Board of Commissioners of Public Utilities established by the *Public Utilities Act* (NL) or any successor;

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

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

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

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

“Pricing Node” has the meaning set forth in **Section 2.6(a)**;

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

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

“Recipient Party” has the meaning set forth in **Section 16.2(a)**;

"Reference Day-Ahead Price" means the Day-Ahead Price (as that term is defined in the ISO-NE Tariff) in respect of the Pricing Node;

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

"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;

"Rights Term" means the 50 year period of time commencing at First Commercial Power;

"Scheduling Protocol" means the scheduling protocol attached as **Schedule 1**;

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

"Supporting Material" has the meaning set forth in **Section 6.1**;

"Tariff Charges" means all applicable rates, charges and other amounts payable in accordance with the ISO-NE Tariff;

"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 8.1**;

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

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

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

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

"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)**, Emera shall use commercially reasonable efforts to provide Nalcor with all of the information it needs to prepare Nalcor’s accounting records in accordance with Canadian GAAP.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall

have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.

- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced 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" or "decided" by a Party or requires a Party's "consent", then (i) such approval, decision, or consent 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

- (a) This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 16**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.
- (b) Notwithstanding **Section 1.4(a)**, the ISO-NE Tariff shall be construed in accordance with the governing laws applicable to such Tariff.

1.5 Schedules

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

- Schedule 1 - Scheduling Protocol
- Schedule 2 - Form of Assignment Agreement
- Schedule 3 - Dispute Resolution Procedure
- Schedule 4 - Formal Agreements

ARTICLE 2
MEPCO TRANSMISSION RIGHTS AND SALE OF ENERGY AND CAPACITY

2.1 **MEPCO Rights**

During the Rights Term Emera shall, in accordance with this Agreement, provide Nalcor with the use of such of the MEPCO Transmission Rights which have not otherwise been assigned absolutely to Nalcor pursuant to **Section 2.4**.

2.2 **Renewal of MEPCO Rights**

Provided that all of the MEPCO Transmission Rights have not been assigned absolutely to Nalcor pursuant to **Section 2.4**, Emera shall exercise its renewal or roll-over rights in respect of each then-current term of the MEPCO Transmission Rights and the MEPCO Grandfathered Transmission Service Agreements, including by exercising any related rights of first refusal, and shall thereby prevent the expiry of the MEPCO Transmission Rights and the MEPCO Grandfathered Transmission Service Agreements.

2.3 **Nalcor's Right to Direct Emera**

At any time during the Rights Term, Nalcor may at its option require Emera to do any or all of the following:

- (a) assign all or a stated amount of the MEPCO Transmission Rights for Nalcor's use for a fixed time period in accordance with the ISO-NE Tariff and the Scheduling Protocol;
- (b) assign all or a stated amount of the MEPCO Transmission Rights to Nalcor absolutely in accordance with **Section 2.4**; and
- (c) in the event of an expiry of all or a portion of the MEPCO Transmission Rights, use commercially reasonable efforts to obtain Equivalent Rights after the expiration of the applicable term and any renewal periods of the MEPCO Transmission Rights. Should Emera be successful in obtaining Equivalent Rights, it shall provide such rights to Nalcor on the same terms and conditions as are applicable to the provision of the MEPCO Transmission Rights under this Agreement. For greater certainty, this **Section 2.3(c)** shall not affect Emera's obligations pursuant to **Section 2.2**. The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve any Dispute as to whether Transmission Rights are Equivalent Rights by arbitration.

2.4 **Absolute Assignment of MEPCO Transmission Rights**

- (a) If Nalcor requests an absolute assignment of any or all of the MEPCO Transmission Rights, Emera shall assign such MEPCO Transmission Rights to Nalcor absolutely.

- (b) Upon and following the effective date of an absolute assignment of any or all of the MEPCO Transmission Rights by Emera to Nalcor pursuant to **Section 2.4(a)**, until such time as Nalcor re-assigns such rights to Emera pursuant to **Section 2.4(c)**:
- (i) Nalcor shall be responsible for the scheduling of all transactions associated with its use of the assigned MEPCO Transmission Rights;
 - (ii) Nalcor shall be solely liable for and shall pay all Tariff Charges in respect of the assigned MEPCO Transmission Rights;
 - (iii) the obligations of Emera under **Sections 2.2** and **2.3(c)** shall not apply to the assigned MEPCO Transmission Rights; and
 - (iv) the obligations of Emera under **Section 2.5** to purchase Energy and/or Capacity shall be reduced by an amount equal to the MEPCO Transmission Rights so assigned to Nalcor.
- (c) At any time following an absolute assignment of any or all of the MEPCO Transmission Rights pursuant to **Section 2.4(a)**, Nalcor may elect at its option, for commercial or operational reasons, to re-assign such rights to Emera absolutely. This option may be exercised by Nalcor one time only.

2.5 Nalcor Right to Sell to Emera

Subject to **Section 2.8**, at any time during the Rights Term, Nalcor may require Emera to purchase from it at the NB-Maine Border (or at such other point on the transmission path between the Delivery Point and the NB-Maine Border as the Parties may mutually agree) an amount of Energy and/or Capacity not to exceed 300 MW, in any scheduling interval, less any portion of the MEPCO Transmission Rights, expressed in MWs, that has been absolutely assigned to Nalcor or is otherwise then being utilized by Nalcor. Title, including all of the benefits and burdens of ownership and risk of loss of such Energy and/or Capacity, shall pass to Emera in Canada. For greater certainty, the rights of Nalcor under this **Section 2.5** will continue in effect regardless of any lapse, expiry or other termination of the MEPCO Transmission Rights during the Rights Term. The price to be paid by Emera to Nalcor for such Energy and/or Capacity shall be determined in accordance with **Section 2.6** and shall be less the Tariff Charges that would have been payable by Nalcor had such Energy and/or Capacity been transmitted by Nalcor from the NB-Maine Border to the Pricing Node pursuant to the ISO-NE Tariff and assuming that the MEPCO Transmission Rights, if then in existence, had been used in such transmission.

2.6 Energy and Capacity Pricing

- (a) Energy Pricing - In the case of the purchase of Energy pursuant to **Section 2.5**, the purchase price shall be calculated using the Reference Day-Ahead Price for the applicable hours at the ISO-NE Salisbury node (described as NB-NE External Node .I.SALBRYNB345 in the ISO-NE Market Operations Manual) or any replacement or comparable node designated by the ISO-NE (the "**Pricing Node**"). Should such node cease to exist or otherwise not serve as a valid reference point for determining a

Reference Day-Ahead Price at the NB-Maine Border, the Parties agree to negotiate to determine an effective pricing mechanism to establish such a value. **Section 1.2(m)** applies to the foregoing sentence.

- (b) Capacity Pricing - In the case of the purchase of Capacity pursuant to **Section 2.5**, the purchase price shall be the contract price under the contract referred to in **Section 2.8(b)**, exclusive of any penalties, liquidated damages or like amounts.
- (c) Specified Dispute - Any Dispute as to the appropriate purchase price for Energy and/or Capacity purchased by Emera from Nalcor pursuant to this **Section 2.6** shall be a Specified Dispute and the Parties shall direct the independent expert to include in its award a methodology to expedite resolution of future Disputes under this section.

2.7 Scheduling

Subject to **Section 2.4(b)(i)**, the scheduling of the use of the MEPCO Transmission Rights and the purchase of Energy and/or Capacity pursuant to this Agreement shall be performed in accordance with the Scheduling Protocol.

2.8 Conditions on Emera Payments

Emera's obligation under **Section 2.5** to purchase Energy and/or Capacity is subject to:

- (a) in the case of Energy:
 - (i) Nalcor delivering the Energy which Emera is obligated to purchase to the NB-Maine Border (or at such other point on the transmission path between the Delivery Point and the NB-Maine Border as the Parties may mutually agree); and
 - (ii) Nalcor demonstrating that there is a market for such Energy at the applicable time, with such market being established by either (A) the existence of a Reference Day-Ahead Price at the applicable time that can be obtained for the Energy given market and transmission system conditions; or (B) Nalcor otherwise demonstrating such a market to the reasonable satisfaction of Emera, including providing Emera with such documentary evidence as Emera may reasonably require; and
- (b) in the case of Capacity, Nalcor demonstrating to the reasonable satisfaction of Emera, including providing Emera with such documentary evidence as Emera may reasonably require, that it has a contract in place pursuant to which Nalcor would have sold such Capacity and the technical capability, in accordance with the ISO-NE Tariff, to sell such Capacity at or beyond the NB-Maine Border.

Any Dispute as to whether any of the foregoing conditions have been met shall be a Specified Dispute.

2.9 Notices and Communications

Emera shall deliver to Nalcor in a timely manner all notices and other communications received by Emera that pertain to (i) the standing of the MEPCO Transmission Rights; or (ii) Nalcor's interest in and use of the MEPCO Transmission Rights pursuant to this Agreement, except where all of the information contained in such notices and communications is otherwise generally available to ISO-NE transmission customers.

2.10 ISO-NE Tariff Charges – Assignments for Fixed Periods

In respect of any assignment of the MEPCO Transmission Rights or Equivalent Rights by Emera to Nalcor for a fixed period pursuant to **Section 2.3(a)**, Nalcor shall be responsible for and shall pay to the ISO-NE or to MEPCO, as applicable, all Tariff Charges pertaining to the assigned MEPCO Transmission Rights or Equivalent Rights during the period of such assignment pursuant to the ISO-NE Tariff, provided that the applicable Tariff Charges for each day during the assignment shall be calculated in accordance with the ISO-NE Tariff, as follows:

- (a) in the case of an assignment of MEPCO Transmission Rights, by multiplying the Daily MEPCO Charge by the MW amount associated with the assigned MEPCO Transmission Rights; and
- (b) in the case of an assignment of Equivalent Rights, by first determining the per MW amount paid by Emera during the applicable month in respect of the Equivalent Rights, then dividing that amount by the number of days in the month and then multiplying the resulting quotient by the MW amount associated with the assigned Equivalent Rights.

2.11 Measurement

The measurement of the Energy and/or Capacity transmitted for Nalcor pursuant to this Agreement will be made in accordance with the ISO-NE Tariff and the practices of the ISO-NE, as applicable. Except with respect to any costs that may be incorporated into the Tariff Charges for which Nalcor is responsible pursuant to **Section 2.4(b)(ii)** or **Section 2.10**, any costs imposed by the ISO-NE associated with the Transmission Rights provided hereunder in relation to metering and communications equipment shall be to the account of Emera.

ARTICLE 3 INTERACTION OF TARIFF AND AGREEMENT

3.1 Parties to Comply with ISO-NE Tariff

- (a) The Parties acknowledge that Emera is a transmission customer under the ISO-NE Tariff, and therefore that Emera is required to comply with the ISO-NE Tariff in its provision of the MEPCO Transmission Rights. Unless otherwise provided for in this

Agreement, Nalcor agrees that it shall not take steps or actions in its use of the MEPCO Transmission Rights that would prevent Emera from complying with terms of the ISO-NE Tariff. If Nalcor is an assignee of the MEPCO Transmission Rights pursuant to **Sections 2.3 or 2.4**, Nalcor shall comply with the ISO-NE Tariff.

- (b) In the event of any conflict between the provisions of this Agreement and the provisions of the ISO-NE Tariff, for the purposes of the interpretation and implementation of this Agreement, the provisions of this Agreement shall prevail.
- (c) If at any time the ISO-NE Tariff or any defined term under the ISO-NE Tariff used in this Agreement is revoked or eliminated, and this revocation or elimination materially affects the interpretation of, or the ability to give effect to, any provision of this Agreement, the Parties shall negotiate new valid and enforceable provisions to allow the interpretation of, and to give effect to, this Agreement. **Section 1.2(m)** applies to this **Section 3.1(c)**.

ARTICLE 4 NON-EXCLUSIVITY

4.1 Parties in Competition

The Parties acknowledge that each of them is and will continue to be in the business of marketing Energy and Capacity, both in cooperation and in competition with the other Party. This Agreement in no way limits or restricts either Party from carrying on that business in the manner it deems fit, including appearing in opposition to the other Party in regulatory matters, provided, however, that under no circumstances will competitive interests permit Emera to withhold from Nalcor or prevent or attempt to prevent Nalcor from using all or part of the MEPCO Transmission Rights.

ARTICLE 5 PERMITS, LICENCES AND APPLICABLE LAW

5.1 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. In respect of Nalcor's use of the MEPCO Transmission Rights hereunder and the Parties' performance of this Agreement, each Party shall be responsible for obtaining and maintaining Regulatory Approvals required by it that are customarily obtained and maintained by wholesale electricity market participants to permit the export of Energy from Canada and the import of Energy into the United States of America.
- (b) Each Party shall comply with any Applicable Law of any Authorized Authority with jurisdiction over the subject matter of this Agreement.

ARTICLE 6 INVOICING AND PAYMENT

6.1 Invoices

Unless otherwise provided in this Agreement with respect to specific payments, the calendar month is the standard period for invoicing amounts payable by a Party (the “Payor”) to the other Party (the “Payee”) hereunder. On or before the 15th day of each calendar month, the Payee shall provide an invoice to the Payor for all amounts in respect of the preceding month chargeable by the Payee to the Payor and, subject to **Section 6.8**, any amounts not previously invoiced to the Payor. The Payee shall provide with the invoice such supporting documents and information as the Payor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced (the “Supporting Material”).

6.2 Disputed Amounts

Within 30 days after receipt of an invoice from the Payee, the Payor shall report in writing to the Payee any disputed amounts in the invoice, specifying the reasons therefor.

6.3 Time and Method of Payment

Within 30 days after its receipt of a properly prepared invoice, accompanied by acceptable Supporting Material, the Payor shall pay to the Payee the amount stated on the invoice less any amounts disputed pursuant to **Section 6.2** and any withholding required by Applicable Law. The Payor shall make payment by electronic funds transfer or other mutually agreed method to an account designated by the Payee.

6.4 Effect of Payment

Notwithstanding **Section 6.2**, payment of an invoice will not prejudice the right of the Payor to dispute the correctness of the invoice for a period of up to two years after the end of the calendar year in which the Payor received the invoice. Failure by the Payor to dispute charges will not be deemed to be acceptance of the charges or preclude the Payor from subsequently disputing an amount or conducting an audit of the charges within two years after the end of the calendar year in which the Payor received the invoice. Any charges not disputed in writing by the Payor within two years after the end of the calendar year in which the Payor received the invoice for such charges will conclusively be presumed to be true and correct.

6.5 Resolution of Objections

The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after the Payee’s receipt of a notification of disputed amounts pursuant to **Section 6.2**. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, the Payor shall pay any amount determined to be owing

to the Payee within five Business Days after the Payor receives an invoice from the Payee for such amount.

6.6 Overpayments

Within 15 Business Days after a Payee's discovery or receipt of written evidence of an overpayment, the Payee shall refund the overpayment to the Payor.

6.7 Interest on Overdue Amounts

Any amount not paid by either Party when due, including any charge disputed by the Payor pursuant to **Section 6.2** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 6.3**, and any refund of an overpayment pursuant to **Section 6.6**, will bear interest at the Prime Rate plus three percent per annum, calculated daily not in advance, from the date upon which the payment became due to and including the date of payment, and interest accrued will be payable on demand.

6.8 Waiver of Unbilled Charges

If a Payee entitled to payment in respect of an amount paid by the Payee to a third party fails to invoice the Payor pursuant to this **Article 6** for such amount within six months after the date the Payee made payment to the third party, the right to such payment by the Payor is waived. Notwithstanding the foregoing, a Party may recover Taxes pursuant to a statutory right to recover such Taxes, including the right to recover HST pursuant to Section 224 of the Excise Tax Act.

6.9 Records and Audits

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

**ARTICLE 7
TAXES**

7.1 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 7.1(c)**:
- (i) Emera shall pay or cause to be paid all Taxes in respect of the MEPCO Transmission Rights and the Equivalent Rights, if any;
 - (ii) notwithstanding **Section 7.1(b)(i)**, Nalcor shall pay or caused to be paid all Taxes imposed by any Authorized Authority on or with respect to (A) Energy and/or Capacity transmitted using the MEPCO Transmission Rights or Equivalent Rights during a period in which such MEPCO Transmission Rights or Equivalent Rights, as applicable, have been assigned to Nalcor pursuant to **Section 2.3(a)**, and (B) the MEPCO Transmission Rights or Equivalent Rights that have been absolutely assigned to Nalcor pursuant to **Section 2.4(a)** and not reassigned to Emera pursuant to **Section 2.4(c)**;
 - (iii) if Nalcor is required by Applicable Law to remit or pay Taxes which are Emera's responsibility hereunder, Nalcor shall first offset the amount of Taxes so recoverable from other amounts owing by it to Emera under this Agreement, and Emera shall promptly reimburse Nalcor for such Taxes to the extent not so offset;
 - (iv) if Emera is required by Applicable Law to remit or pay Taxes which are Nalcor's responsibility hereunder, Emera shall first offset the amount of Taxes so recoverable from other amounts owing by it to Nalcor under this Agreement, and Nalcor shall promptly reimburse Emera for such Taxes to the extent not so offset; and
 - (v) 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 7.1(a)** and **7.2(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 7.3**; and
 - (iv) if one Party incurs an expense as agent for the other Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 7.1(b)** and **7.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) Emera and its Affiliates are solely responsible for the payment of income taxes and HST payable by Emera and its Affiliates, as the case may be; and
 - (ii) Nalcor and its Affiliates are solely responsible for the payment of income taxes and HST payable by Nalcor and its Affiliates, as the case may be.

7.2 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 7.2(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.

7.3 Invoicing

All invoices, as applicable, issued pursuant to **Article 6** 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.

7.4 Payment and Offset

- (a) Subject to **Section 7.4(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.

7.5 HST Registration Status and Residency

- (a) Nalcor represents and warrants that it is registered for purposes of the HST and that its registration number is 837364611, and undertakes to advise Emera of any change in its HST registration status or number.
- (b) Emera represents and warrants that it is registered for purposes of the HST and that its registration number is 868143132, and undertakes to advise Nalcor of any change in its HST registration status or number.
- (c) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Emera of any change in its residency status.
- (d) Emera represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Nalcor of any change in its residency status.

7.6 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).

7.7 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;
- (c) if a Party becomes subject to federal, state or local taxes in the United States; and
- (d) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

In addition to the notification required under this Section, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in paragraphs (a) through (d).

7.8 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.

7.9 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.

7.10 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 7** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 7.1(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.

7.11 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.

7.12 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 7**.

**ARTICLE 8
TERM AND TERMINATION**

8.1 Term

The term of this Agreement (the “**Term**”) shall commence on the Effective Date and shall terminate in accordance with **Section 8.2**.

8.2 Termination of Agreement

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

- (a) expiration of the Rights Term;
- (b) written agreement of the Parties to terminate;
- (c) termination pursuant to **Section 8.3**;
- (d) at the election of Nalcor, if Emera is in default of its obligations to make the MEPCO Transmission Rights or any applicable Equivalent Rights available to Nalcor or to

purchase Energy and/or Capacity in accordance with **Sections 2.1** through **2.5** for a continuous period of 24 months or more;

- (e) at the election of Emera and without liability between the Parties under this Agreement, if the NLDA terminates pursuant to Section 10.2(e) of the NLDA;
- (f) provided Emera and any Affiliate of Emera, as applicable, is in material compliance with its obligations under the NLDA and the LIL LP Agreement, at the election of Emera, and without liability between the Parties under this Agreement, if Emera or an Affiliate of Emera is not provided with the opportunity to invest in the Labrador-Island Link Limited Partnership prior to LIL First Commercial Power in accordance with the provisions of Sections 5.7(b)(ii) and 5.8(a) of the NLDA; or
- (g) provided Emera and any Affiliate of Emera, as applicable:
 - (i) is in material compliance with its obligations under the NLDA and the LIL LP Agreement;
 - (ii) has not invested in the Labrador-Island Link Limited Partnership; and
 - (iii) has provided Nalcor with written agreement to terminate the NLDA,

at the election of Emera, and without liability between the Parties under this Agreement, if Emera is not satisfied, as at LIL Sanction, acting reasonably, that the Labrador-Island Link Limited Partnership will be a public utility regulated by the PUB or other Authorized Authority allowing recovery of costs associated with the Labrador-Island Link on a cost of service basis.

8.3 Extended Force Majeure

- (a) Termination of Agreement - If:
 - (i) Emera has given Notice under **Section 11.1** of a Force Majeure which prevents Emera from providing the MEPCO Transmission Rights or the Equivalent Rights;
 - (ii) despite Emera complying with its obligations under **Section 11.1(b)(iii)**, there are no commercially reasonable means to rectify the consequences of such Force Majeure within 36 months after the Force Majeure 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 8.3(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 8.4**.

- (b) Extension of Time for Rectification - If the consequences of the Force Majeure can be rectified, and Emera is diligently proceeding with such measures as are required to rectify the consequences of the Force Majeure, the Extended Force Majeure Period shall be extended by such period as is required for Emera to complete such measures.

8.4 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 14.1**); 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 8.4**.
- (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 18.13**.

ARTICLE 9 SUSPENSION DURING CROSS-DEFAULT

9.1 Suspension During Cross-Default

- (a) If Nalcor or an Affiliate of Nalcor is in default, after any applicable cure period, of its obligations under either of the NLDA or the LIL LP Agreement in respect of any of the following:
- (i) to pay any Cash Calls which are not by the provisions of the NLDA required to be paid by Emera or an Affiliate of Emera to the Labrador-Island Link Limited Partnership;

- (ii) under Section 5.13 of the NLDA; or
- (iii) under Section 5.15(c) of the NLDA,

(a “**Cross Default**”), then Emera, provided it is in material compliance with its obligations under this Agreement, may provide Notice to Nalcor that it intends to invoke its rights under this **Section 9.1**. Subject to **Section 9.1(c)**, if within 14 days from the delivery of the Notice, the Cross Default is not cured or the applicable Losses due to Emera or an Affiliate of Emera (the “**Cross Default Amount**”) have not been paid to Emera or an Affiliate of Emera as provided for in the agreement under which the Cross Default has occurred or is occurring, Emera may suspend the provision of Transmission Rights and any Energy and/or Capacity purchase obligations under this Agreement.

- (b) Upon the Cross Default Amount being paid by Nalcor or an Affiliate of Nalcor to Emera or an Affiliate of Emera, the suspension of Transmission Rights and any Energy and/or Capacity purchase obligations under this Agreement shall cease, and Emera shall resume provision thereof in accordance with this Agreement.
- (c) Emera shall not suspend the provision of Transmission Rights or any Energy and/or Capacity purchase obligations under this Agreement if Nalcor is contesting the Cross Default or the Cross Default Amount under the NLDA or the LIL LP Agreement as a dispute and the matter has not been determined in accordance with the dispute resolution procedure provided for in such agreements.

ARTICLE 10 DEFAULT AND REMEDIES

10.1 Emera Events of Default

Except to the extent excused as a result of Force Majeure in accordance with **Article 11**, the occurrence of one or more of the following events shall constitute a default by Emera under this Agreement (an “**Emera Default**”):

- (a) Emera fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Nalcor that such amount is due and owing;
- (b) Emera fails to provide Transmission Rights in accordance with this Agreement or fails to comply with its obligations under **Section 2.5**;
- (c) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.1(a)** or **10.1(b)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor, unless the cure reasonably requires a

longer period and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor;

- (d) any representation or warranty made by Emera in this Agreement is false or misleading in any material respect;
- (e) Emera ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (f) any Insolvency Event occurs with respect to Emera.

10.2 Nalcor Remedies upon Emera Event of Default

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

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

- (b) Failure of Emera to Comply with Article 2 - If Emera:
 - (i) fails to make the MEPCO Transmission Rights or applicable Equivalent Rights available to Nalcor pursuant to **Sections 2.3(a), 2.3(b), 2.4(a)** and, if applicable, **Section 2.3(c)** and Nalcor, after making commercially reasonable efforts, is not otherwise able to transmit Energy and/or Capacity into the ISO-NE market; or
 - (ii) fails to comply with its obligations under **Section 2.5**,

then Emera shall compensate Nalcor as liquidated damages one of the following amounts, selected by Nalcor in its absolute discretion (and notwithstanding whether Nalcor actually mitigates its loss):

 - (iii) the Energy and/or Capacity which was not transmitted into New England multiplied (on a per MWh basis) by the amount which is 120% of the price determined under **Section 2.6**; or

- (iv) the Energy and/or Capacity which was not transmitted into New England multiplied (on a per MWh basis) by the amount which is 120% of the price determined under Section 3.3 of the New Brunswick Transmission Utilization Agreement, with the forecasted capital costs for such plant being as of the commencement date of the default.
- (c) Termination pursuant to Section 8.2(d) - If Nalcor elects to terminate this Agreement pursuant to **Section 8.2(d)**, Nalcor shall be entitled to exercise all rights, remedies, and recourse as set forth in **Section 10.2(a)** to recover all Losses, including as set forth in **Section 10.2(d)**, arising from the Emera Default and resultant termination.
- (d) Losses - Subject to **Article 13**, Nalcor may recover all Losses suffered by Nalcor that are due to an Emera Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Nalcor to recover any amounts owed to Nalcor by Emera under this Agreement.
- (e) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his, 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.
- (f) Equitable Relief - Nothing in this Article will limit or prevent Nalcor from seeking equitable relief including specific performance, or a declaration to enforce Emera's obligations under this Agreement.

10.3 Nalcor Events of Default

Except to the extent excused as a result of Force Majeure in accordance with **Article 11**, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a "**Nalcor Default**"):

- (a) Nalcor fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Emera that such amount is due and owing;
- (b) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera;

- (c) any representation or warranty made by Nalcor in this Agreement is false or misleading in any material respect;
- (d) Nalcor ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (e) any Insolvency Event occurs with respect to Nalcor.

10.4 Emera Remedies upon Nalcor Event of Default

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

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

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

ARTICLE 11 FORCE MAJEURE

11.1 Force Majeure

- (a) The provisions of the ISO-NE Tariff that set out the definition and legal effect of force majeure events are incorporated herein by reference, and for the limited purpose of incorporating such provisions by reference, the references to "Transmission Owner" and "Transmission Customer" as used in those ISO-NE Tariff provisions shall be deemed to refer, respectively, to Emera and Nalcor.
- (b) If by reason 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:

- (i) forthwith provide Notice to the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
 - (ii) be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
 - (iii) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;
 - (iv) as soon as reasonably possible after such Force Majeure, fulfill or resume fulfilling its obligations hereunder;
 - (v) provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and
 - (vi) not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.
- (c) Notwithstanding **Sections 11.1(b)(i)** and **18.1**, Notices given in respect of Force Majeure reasonably anticipated by the Party with notification responsibility to be of a duration of less than 24 hours shall be given to an operational representative of the receiving Party. Each Party shall provide by Notice telephone and other electronic contact information to the other for the purposes of this Section prior to First Commercial Power. Either Party may change such contact information from time to time by giving Notice of such change to the other Party in accordance with **Section 18.1**.

ARTICLE 12 LIABILITY AND INDEMNITY

12.1 **Nalcor Indemnity**

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

the gross negligence or wilful misconduct of any member of the Nalcor Group occurring in connection with, incidental to or resulting from Nalcor's obligations under this Agreement.

12.2 Emera Indemnity

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

12.3 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 12.1** or **12.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 12.3**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 12.3** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.
- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly

reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 12.3(h)**.

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

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

- (h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 12.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

12.4 Insurer Approval

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

ARTICLE 13 LIMITATION OF DAMAGES

13.1 Limitations and Indemnities Effective Regardless of Cause of Damages

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

13.2 No Consequential Loss

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

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

13.3 Liquidated Damages

To the extent that any damages required to be paid under **Article 10** of this Agreement are expressly stated to be liquidated damages, the Parties have computed, estimated and agreed upon the amount of such damages as a reasonable forecast of anticipated or actual Losses in view of the difficulty in calculating or determining the consequences of the harm or the amount of the Losses. The Parties agree that such liquidated damages are a genuine pre-estimate of damages, are not a penalty, and are intended to protect both Parties from uncertainties. The obligation of a Party to pay, and the other Party to accept such amount, as applicable, shall be legally enforceable and binding upon the Parties.

13.4 Insurance Proceeds

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

13.5 Double Recovery

Any damages due to Nalcor 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 Nalcor under the NS Transmission Utilization Agreement, the New Brunswick Transmission Utilization Agreement or the Maritime Link (Nalcor) Transmission Service Agreement.

13.6 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 which are due to such lender by reason of such lender calling for early repayment of debt associated with a Party's financing related to the Formal Agreements or Energy sales by Nalcor or an Affiliate of Nalcor.

ARTICLE 14 CONFIDENTIALITY

14.1 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.

14.2 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 15 ASSIGNMENT AND CHANGE OF CONTROL

15.1 Nalcor Assignment Rights

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Nalcor Rights**"), without the prior written consent of Emera, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera substantially in the form attached hereto as **Schedule 2**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor will be deemed to be an assignment of Nalcor Rights requiring the prior written consent of Emera pursuant to **Section 15.1(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 15.1** will be null and void.

15.2 Nalcor Rights Otherwise Not Assignable

Except in respect of any MEPCO Transmission Rights assigned absolutely to Nalcor as provided for in **Section 2.4**, and subject to **Section 15.1** hereof, the Transmission Rights granted to Nalcor under this Agreement are personal to Nalcor. Except in the case of an absolute assignment as provided for in **Section 2.4**, Nalcor shall only use the MEPCO Transmission Rights provided to it pursuant to the terms of this Agreement in good faith to transmit Energy generated by itself or an Affiliate or acquired by it or an Affiliate from a third party in a bona fide commercial transaction and, without limitation and for greater certainty, Nalcor may not use such MEPCO Transmission Rights to directly or indirectly transmit Energy on behalf of a third party.

15.3 Emera Assignment Rights

- (a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**Emera Rights**”) without the prior written consent of Nalcor, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that Emera enters into an agreement with Nalcor substantially in the form attached hereto as **Schedule 2**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an Emera Affiliate Assignee that would result in such Emera Affiliate Assignee no longer being an Affiliate of Emera will be deemed to be an assignment of Emera Rights requiring the prior written consent of Nalcor pursuant to **Section 15.3(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 15.3** will be null and void.

ARTICLE 16 DISPUTE RESOLUTION

16.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 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 16** without prejudice to either Party’s rights pursuant to this Agreement.

16.2 Procedure for Inter-Party Claims

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the “**Claiming Party**”) intending to assert a Claim against the other Party (the “**Recipient Party**”) shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party’s failure to promptly

Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.

- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.
- (c) Disputed Invoices - This **Section 16.2** does not apply to Disputes relating to invoices pursuant to **Article 6**, which shall be governed by **Section 6.5**.

ARTICLE 17
REPRESENTATIONS, WARRANTIES AND COVENANTS

17.1 **Nalcor Representations and Warranties**

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

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

- (e) except as disclosed by it to Emera in writing on or before the Effective Date, there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance 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.

17.2 Emera Representations and Warranties

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

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

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

- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement;
- (h) Emera is not in breach of the MEPCO Grandfathered Transmission Service Agreements, which are in full force and effect and which are subject to the ISO-NE Tariff; and
- (i) the execution and performance by Emera of its obligations under this Agreement will not violate or result in a violation of the MEPCO Transmission Rights or the MEPCO Grandfathered Transmission Service Agreements or the ISO-NE Tariff.

17.3 Emera Covenants

Emera covenants with Nalcor that:

- (a) it will not agree to an amendment of the MEPCO Grandfathered Transmission Service Agreements that would prevent it from fulfilling its obligations under this Agreement;
- (b) it will perform its obligations pursuant to the MEPCO Transmission Rights, the MEPCO Grandfathered Transmission Service Agreements and the ISO-NE Tariff and will take such other steps within its reasonable control to keep the MEPCO Transmission Rights and the MEPCO Grandfathered Transmission Service Agreements in force and in good standing; and
- (c) it is entering into this Agreement in its own right and on behalf of its Affiliates, Emera Energy Inc. and Bayside Power L.P., as holders of the MEPCO Transmission Rights. Without limiting the obligations and liabilities of Emera under this Agreement, Emera shall cause each such Affiliate, to the extent necessary to give effect to this Agreement, (i) to honour and perform all of its obligations in respect of the MEPCO Transmission Rights and (ii) to be bound by and subject to this Agreement.

**ARTICLE 18
MISCELLANEOUS PROVISIONS**

18.1 Notices

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

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Vice President, Strategic Planning and Business
Development
Fax: (709) 737-1782

with a copy to:

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

To Emera:

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

with a copy to:

Emera Newfoundland and Labrador Holdings Inc.
9 Austin St.
St. John's, NL
A1B 4C1

Attention: President
Fax: (709) 722-2083

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

18.2 Prior Agreements

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

18.3 Counterparts

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

18.4 Expenses of Parties

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

18.5 Announcements

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

18.6 **Relationship of the Parties**

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as expressly provided herein, neither this Agreement nor any other agreement or arrangement between the Parties pertaining to the 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.

18.7 **Further Assurances**

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

18.8 **Severability**

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

18.9 **Time of the Essence**

Time shall be of the essence.

18.10 **Amendments**

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

18.11 **No Waiver**

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

18.12 No Third Party Beneficiaries

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

18.13 Survival

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

18.14 Waiver of Sovereign Immunity

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

18.15 Successors and Assigns

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

18.16 Capacity of Nalcor

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

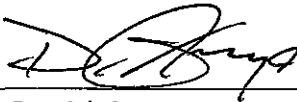
[Remainder of this page intentionally left blank.]

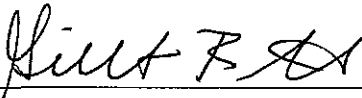
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

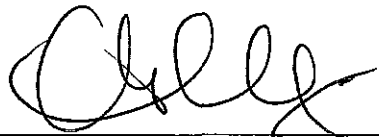
Executed and delivered by Nalcor Energy,
in the presence of:

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

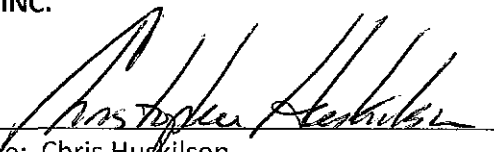


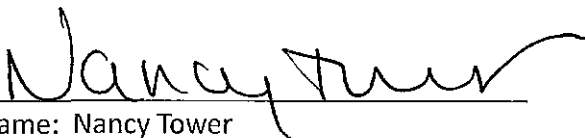
Name: Rob Hull

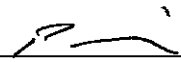
We have authority to bind the corporation.

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

EMERA INC.

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

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



Name: Peter Doig

We have authority to bind the company.

MEPCO TRANSMISSION RIGHTS AGREEMENT

SCHEDULE 1

SCHEDULING PROTOCOL

SCHEDULING PROTOCOL

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Schedule, except to the extent of a conflict with a definition set out below, the definitions set forth in the Transmission Agreements apply and in addition thereto:

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

“Backstop Remedy” means the obligations of Emera pursuant to the NBTUA:

- (a) during the First Term, to purchase Energy and/or Capacity from Nalcor at the Delivery Point pursuant to Section 2.3(a) of the NBTUA;
- (b) during the First Term, to purchase Energy and/or Capacity from Nalcor at the NS-NB Border and re-sell such Energy and/or Capacity to Nalcor at the NB-Maine Border pursuant to Section 2.3(b) of the NBTUA; and
- (c) during the Subsequent Term, to purchase Energy from Nalcor at the Delivery Point pursuant to Section 3.2(b) of the NBTUA;

“Bayside Rights” has the meaning set forth in the NBTUA;

“Dispatch Plan” has the meaning set forth in **Section 3.1**;

“E-Tags” means electronic tags compliant with current industry standards for the scheduling and transmission of Energy between or across electric utility company territories;

“Equivalent Rights” has the meaning set forth in the NBTUA or the MEPCO TRA, as the context requires;

“First Term” has the meaning set forth in the NBTUA;

“MEPCO Purchase Volumes” means the quantities of Energy and/or Capacity that Nalcor requires Emera to purchase from Nalcor during designated scheduling intervals pursuant to Section 2.5 of the MEPCO TRA;

“MEPCO TRA” means the MEPCO Transmission Rights Agreement between the Parties;

“MEPCO Transmission Rights” has the meaning set forth in the MEPCO TRA;

“New England” or “NE” means the geographical area in which the bulk electric system is operated by ISO-NE, or its successor;

"NBTUA" means the New Brunswick Transmission Utilization Agreement between the Parties;

"NB Nominated Transmission Quantity" or **"NB-NTQ"** means the quantities of Energy and/or Capacity nominated by Nalcor in respect of designated scheduling intervals for transmission by Emera through the use of the Bayside Rights or the Equivalent Rights, as applicable, in accordance with the NBTUA;

"NS-NB Border" has the meaning set forth in the NBTUA;

"NS Nominated Transmission Quantity" or **"NS-NTQ"** means the quantities of Energy and/or Capacity nominated by Nalcor in respect of designated scheduling intervals for transmission by Emera pursuant to the Transmission Facilitation Service in accordance with the NSTUA;

"NSTUA" means the Nova Scotia Transmission Utilization Agreement between the Parties;

"Prior Day" means:

- (a) in respect of scheduling flows pursuant to the NSTUA or the MEPCO TRA, the day prior to the intended Energy flow; and
- (b) in respect of scheduling flows pursuant to the NBTUA, the prior "Business Day" (as defined in the NBTUA) to the intended Energy flow;

"System Operator" means, as applicable, the Nova Scotia Power System Operator, the New Brunswick System Operator, ISO-NE or any respective successor system operator;

"Subsequent Term" has the meaning set forth in the NBTUA; and

"Transmission Agreements" means the NSTUA, the NBTUA, and the MEPCO TRA.

1.2 **Section References**

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

1.3 **Interpretation Provisions**

Section 1.2(i) and Section 1.2(j) of the Transmission Agreements shall not apply to this Schedule.

SECTION 2 - PURPOSE AND OVERVIEW

2.1 Purpose

The purpose of this Schedule is to provide the protocol for communications between Nalcor and Emera necessary to facilitate the scheduling of Energy for Nalcor under the Transmission Agreements. The scheduling protocol is intended to facilitate the use by or assignment to Nalcor of Transmission Rights under the Transmission Agreements so that it may participate in electricity markets beyond NS (including those in NB and NE) by establishing the scheduling procedures by which Emera will schedule and provide transmission service in accordance with the Transmission Agreements.

2.2 Ownership of Nalcor Throughput Energy

Except as contemplated by Section 2.3(b) of the NBTUA, Nalcor will retain ownership and title to the Energy transmitted from NL through to Nalcor's final point of sale for each transaction.

2.3 E-Tags

Unless Nalcor has otherwise advised Emera, Nalcor shall be responsible for the creation of applicable E-Tags. Emera shall create applicable E-Tags if requested to do so by Nalcor.

SECTION 3 - PROCEDURE AND STANDARD NOTIFICATION TIMELINES

3.1 Scheduling Procedures

The following scheduling procedures for daily scheduling shall apply when Nalcor Schedules the transmission of Energy pursuant to the Transmission Agreements:

Step 1 Scheduling Request - No later than 0700 APT of the Prior Day, Nalcor will provide Emera with a schedule of its transmission service requirements and the MEPCO Purchase Volumes election for all hours of the applicable day(s) in respect of each of the Transmission Agreements (the "**Dispatch Plan**") containing the following elements:

- (a) in respect of the NSTUA, the requested NS-NTQ;
- (b) in respect of the NBTUA:
 - (i) the time period and associated MW amount for which Nalcor requires an assignment of the Bayside Rights in accordance with Section 2.1(b)(i) of the NBTUA; and/or
 - (ii) the requested NB-NTQ;
- (c) in respect of the MEPCO TRA:

- (i) the time period and associated MW amount for which Nalcor requires an assignment of the MEPCO Transmission Rights in accordance with Section 2.3(a) of the MEPCO TRA; or
 - (ii) the requested MEPCO Purchase Volumes; and
- (d) if Nalcor requires Emera to create the applicable E-Tags, a direction to Emera to create the applicable E-Tags.

Step 2 Acceptance of Dispatch Plan - By no later than 1015 APT of the Prior Day, Emera will either:

- (a) accept the Dispatch Plan in full and notify Nalcor of such acceptance; or
- (b) notify Nalcor that it is unable to accept the Dispatch Plan. In such notification Emera shall:
 - (i) advise Nalcor as to the reason for its inability to accept the Dispatch Plan, and
 - (ii) in respect of the NSTUA, NBTUA and MEPCO TRA, as may be applicable, advise Nalcor as to the reduced amount(s) that can be transmitted or assigned, as applicable.

Step 3 Schedule Modification and Backstop Remedies - If Emera has given Nalcor notice pursuant to **Step 2(b)**, then by no later than 1030 APT:

- (a) Modified Dispatch Plan - Nalcor shall advise Emera as to whether or not to proceed with a modified Dispatch Plan. If so proceeding:
 - (i) the notice shall set out a modified Dispatch Plan containing the elements set forth in **Step 1**, adjusted to address the limitations set out in **Step 2(b)(ii)**;
 - (ii) if Emera has advised Nalcor pursuant to **Step 2(b)(ii)** as to the availability of a reduced amount of the NS-NTQ, the modified Dispatch Plan shall specify either: (A) this amount, or (B) nil;
 - (iii) subject to any limitations set out in **Step 2(b)(ii)**, the modified Dispatch Plan may adjust the amount(s) to be transmitted or assigned in respect of the NBTUA and MEPCO TRA; and
 - (iv) upon communication of the modified Dispatch Plan to Emera pursuant to this **Step 3(a)**, the modified Dispatch Plan shall be accepted by Emera and confirmation of the scheduling associated with the modified Dispatch Plan shall be communicated to Nalcor in accordance with **Step 5**.
- (b) Election of Backstop Remedy - If Nalcor is entitled to a Backstop Remedy, Nalcor will provide notice to Emera as to which, if any, Backstop Remedy it will require Emera

to execute during the applicable day. Such notice will specify Nalcor's election in respect of the Backstop Remedy, as follows:

- (i) Purchase at the Delivery Point pursuant to Section 2.3(a) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy and/or Capacity to be purchased by Emera at the Delivery Point;
- (ii) Purchase and resale pursuant to Section 2.3(b) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy and/or Capacity to be purchased by Emera at the NS-NB Border and to be resold by Emera to Nalcor at the NB-Maine Border; or
- (iii) Purchase at the Delivery Point pursuant to Section 3.2(b) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy to be purchased by Emera at the Delivery Point.

Step 4 E-Tag Creation - By no later than 1030 APT of the Prior Day, Nalcor will, or, if directed by Nalcor pursuant to **Step 1(d)**, Emera will, create the E-Tags associated with the scheduling requests contained in the Dispatch Plan.

Step 5 Implementation of Dispatch Plan – The Energy to be transmitted through NS and NB, in respect of which Emera has accepted an original Dispatch Plan in accordance with **Step 2(a)** or a modified Dispatch Plan in accordance with **Step 3(a)(iv)**, as applicable, shall be the “**Confirmed NS-NTQ Energy**” and the “**Confirmed NB-NTQ Energy**” respectively. Emera will by no later than 1045 APT of the Prior Day, as applicable:

- (a) reserve the transmission service associated with the Confirmed NS-NTQ Energy and the Confirmed NB-NTQ Energy, as applicable, and provide Nalcor with the associated transmission reservation numbers;
- (b) assign to Nalcor the Bayside Rights;
- (c) assign to Nalcor the MEPCO Transmission Rights; and
- (d) confirm acceptance to Nalcor of the specified MEPCO Purchase Volumes.

Step 6 Confirmation of Scheduling of Backstop Remedy - By no later than 1100 APT of the Prior Day, if Nalcor elects a Backstop Remedy pursuant to **Step 3(b)**, Emera will provide confirmation to Nalcor of the scheduling associated with the Backstop Remedy elected by Nalcor.

Step 7 Confirmation of Energy Flows - Nalcor will notify Emera of its final scheduled Energy flows no later than 1400 APT of the Prior Day, except in the case of Energy flows destined to NE and any other markets of similar design, in which case such final scheduled Energy flows will be confirmed immediately on notification from the applicable System Operator to market participants of accepted flows.

3.2 Communications

Unless otherwise agreed to by the Parties, communications between the Parties in respect of the Steps in **Section 3.1** shall be by e-mail or on electronically recorded phone-lines.

3.3 Changes to the Energy Market

The standard notification timelines set out herein are based on the current deadlines of the applicable energy markets. Should the energy markets change their structure and/or timelines, these standard notification timelines shall be updated accordingly as the Parties may mutually agree or, failing agreement, the matter shall be resolved as a Specified Dispute. Section 1.2(m) of the Agreement applies to this **Section 3.3**.

3.4 Equivalent Rights

The Parties acknowledge that at the Effective Date of the Transmission Agreements, the exact nature of the Equivalent Rights that will be provided by Emera to Nalcor pursuant to Section 3.1 of the NBTUA during the Subsequent Term, and that may be provided pursuant to each of Section 2.1(c) of the NBTUA and Section 2.3(c) of the MEPCO TRA, is not known. Therefore, upon the provision of Equivalent Rights by Emera to Nalcor in accordance with any of the foregoing Transmission Agreement provisions, the Parties agree to amend this Scheduling Protocol in order to provide for reasonable scheduling procedures that address the scheduling requirements applicable to such Equivalent Rights. Failing agreement, the matter shall be resolved as a Specified Dispute. Section 1.2(m) of the Agreement applies to this **Section 3.4**.

3.5 Minimum Timelines

Notwithstanding that this Scheduling Protocol describes minimum timelines for the day-ahead scheduling of Transmission Rights pursuant to the Transmission Agreements, nothing herein shall prevent Nalcor from providing its scheduling requirements pursuant to the Transmission Agreements for time periods with durations of longer than one day.

3.6 Nalcor Rights Preserved

Nothing in this Scheduling Protocol affects the rights and remedies available to Nalcor in the case of an Emera Default pursuant to any of the Transmission Agreements.

MEPCO TRANSMISSION RIGHTS AGREEMENT

SCHEDULE 2

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF MEPCO TRANSMISSION RIGHTS AGREEMENT

[NTD: Form to be amended as required if only a portion of the Assignor's interest in the Assigned Agreement is being transferred to the Assignee, including appropriate amendments to Sections 2.1, 2.2 and 2.3.]

THIS ASSIGNMENT AGREEMENT is made effective the • day of •, 20__ ("Effective Date")

AMONG:

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

- or -

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

- and -

AFFILIATE of NALCOR or EMERA, a [*type of entity and jurisdiction or statute of incorporation or formation*] ("**Assignee**")

- and -

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

- or -

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

[NTD: Need to add Affiliate of Nalcor or Emera, as applicable, as party in event of prior assignments.]

WHEREAS:

- A. Nalcor Energy and Emera Inc. have entered into a Term Sheet dated November 18, 2010 (the "**Term Sheet**") confirming their common understanding of the purpose, process and timing for the supply and delivery of power and energy from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England;

B. Nalcor and Emera entered into a _____ Agreement on _____, 2012 (the “Assigned Agreement”) [NTD: Need to add any required references to other assigned rights];

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

**ARTICLE 1
INTERPRETATION**

1.1 **Definitions**

In this Agreement, including the recitals:

“**Affiliate**” means, with respect to any Person, any other Person who directly or indirectly Controls, is Controlled by, or is under common Control with, such Person, provided however that the NL Crown shall be deemed not to be an affiliate of Nalcor;

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

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

“**Assigned Agreement**” has the meaning set forth in the recitals;

“**Assignee**” means _____, an Affiliate of the Assignor;

“**Assignor**” means [Nalcor/Emera or an Affiliate of Nalcor/Emera, as applicable];

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

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

"Consenting Party" means [Nalcor/Emera or, if applicable as a result of prior assignments, specified Affiliates];

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

"Dispute Resolution Procedure" has the meaning set forth in **Section 4.1(a)**;

"Effective Date" has the meaning set forth in the commencement of this Agreement;

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

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

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

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

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

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), or consents to the filing of any

such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;
- (d) any proceeding or application is commenced respecting such Party without its consent or acquiescence pursuant to any Applicable Law relating to bankruptcy, insolvency, reorganization of debts, winding up, liquidation or dissolution, and such proceeding or application (i) results in a bankruptcy order or the entry of an order for relief and a period of 30 days has elapsed since the issuance of such order without such order having been reversed or set aside or (ii) is not dismissed, discharged, stayed or restrained in each case within 30 days of the commencement of such proceeding or application; or
- (e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

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

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

“NL Crown” means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

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

"Notice" means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

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

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

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

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

"Tax" or **"Taxes"** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than a tariff or fees in respect of electricity transmission services) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

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

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

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

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**” or “**Section**” followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

**ARTICLE 2
ASSIGNMENT**

2.1 Assignment to Affiliate

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Agreement and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Agreement and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Agreement as of the Effective Date and covenants and agrees with the Assignor and the Consenting Party to assume the covenants and obligations of the Assignor under the Assigned Agreement. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Agreement arising on and in respect of matters occurring after the Effective Date.

2.3 Limitations on Assignment / Assumption

The Assignor reserves to itself and does not assign to the Assignee, and the Assignee does not assume from the Assignor the following rights and/or obligations:

- (a)
- (b)

2.4 Confirmation of Status of Assigned Agreement

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Party is in default of any of its obligations under the Assigned Agreement. The Consenting Party hereby confirms to the Assignee that neither it nor, to its Knowledge, the Assignor is in default of any of its obligations under the Assigned Agreement.

2.5 Assignor to Remain Liable

Notwithstanding the foregoing, [Nalcor/Emera] expressly acknowledges and agrees that it shall remain liable to the Consenting Party as a primary obligor under the Assigned Agreement to observe and perform all of the conditions and obligations in the Assigned Agreement which the Assignor, and as of the Effective Date the Assignee, are bound to observe and perform.

2.6 [Nalcor/Emera] Defaults

The Assignee shall be in default of the Assigned Agreement if at any time:

- (a) [Nalcor/Emera] ceases to carry on all or substantially all of its business or, except as permitted under the Assigned Agreement, transfers all or substantially all of its undertaking and assets; or
- (b) an Insolvency Event occurs with respect to [Nalcor/Emera].

2.7 Acknowledgement of Consenting Party

The Consenting Party acknowledges, consents to and accepts the within assignment and assumption of the Assigned Agreement, subject to the terms and conditions herein and confirms to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Agreement.

2.8 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and

- (ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.10**.

2.9 Determination of Value for Tax Compliance Purposes

- (a) Subject to the right of final determination as provided under **Section 2.9(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.10 Invoicing

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

- (a) the HST registration number of the supplier;
- (b) the subtotal of all HST taxable supplies;
- (c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and
- (d) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.

2.11 Payment and Offset

- (a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.12 **HST Registration Status**

- (a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.
- (b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

2.13 **[●]**

[Insert any provision required by the Assigned Agreement to be included.]

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 **Assignor and Assignee Representations and Warranties**

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to the Consenting Party that, as of the Effective Date:

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

to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and **[NTD: set out any required Regulatory Approvals]**;

- (g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and
- (h) the Assignee is an Affiliate of the Assignor.

**ARTICLE 4
DISPUTE RESOLUTION PROCEDURE**

4.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule “[]” to the Assigned Agreement (the “**Dispute Resolution Procedure**”).
- (b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Assigned Agreement]**

**ARTICLE 5
MISCELLANEOUS PROVISIONS**

5.1 Notices

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

To Assignor:

[•]

To Assignee:

[•]

To Consenting Party:

[•]

[To Nalcor/Emera:]

[•]

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

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

5.3 Counterparts

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

5.4 Expenses of Parties

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

5.5 Announcements

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

5.6 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them. Except as

expressly provided herein, this Agreement shall not be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting any Party as the agent or legal representative of the other Parties for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of the other Parties.

5.7 Further Assurances

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

5.8 Severability

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

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

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

5.11 No Waiver

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

5.12 No Third Party Beneficiaries

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

5.13 Survival

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

5.14 Waiver of Sovereign Immunity

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

5.15 Successors and Assigns

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

5.16 [Capacity of Nalcor

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown. **NTD: Include if Nalcor signing Agreement.]**

[Remainder of this page intentionally left blank.]

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

Assignor

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the
[company]/[corporation]

Assignee

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the
[company]/[corporation]

Consenting Party

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the
[company]/[corporation]

**[NTD: Need to add Nalcor or Emera, as applicable,
in event of prior assignments]**

MEPCO TRANSMISSION RIGHTS 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.

MEPCO TRANSMISSION RIGHTS AGREEMENT

SCHEDULE 4

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