

NALCOR ENERGY

and

EMERA INC.

JOINT OPERATIONS AGREEMENT

July 31, 2012

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- Schedule 2 - Formal Agreements
- Schedule 3 - Form of Assignment Agreement

JOINT OPERATIONS AGREEMENT

THIS JOINT OPERATIONS AGREEMENT is made effective the 31st day of July, 2012 (the "Effective Date")

B E T W E E N :

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

- and -

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

WHEREAS:

- A. Nalcor and Emera entered into a term sheet dated November 18, 2010 (the "**Term Sheet**") confirming their common understanding of the purpose, process and timing for the supply and delivery of power and energy from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England; and
- B. this Agreement is one of the Formal Agreements contemplated by the Term Sheet;

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 (a) the NL Crown shall be deemed not to be an Affiliate of Nalcor, and (b) if an Affiliate of a Party is an O&M Contractor, that Affiliate, except for the purposes of **Sections 15.3, 15.4 and 15.5**, shall be deemed not to be an Affiliate of such Party and, for greater certainty, not to be within the Nalcor Group or the Emera Group, as applicable, when acting in its capacity as an O&M Contractor;

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

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

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

“Applicable Regulator” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Effective Date” 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 16.2(a)**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

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

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

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

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

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

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

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

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

“Energy and Capacity Agreement” means the agreement of even date herewith between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block;

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

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

“Facility Real Property Interests” means:

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

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

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

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

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

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

- (a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, ice conditions, epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;
- (b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;
- (c) a strike, lockout or other industrial disturbance;
- (d) an accident causing material physical damage to, or materially impairing the operation of, or access to, the Defined Assets;
- (e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the O&M Activities, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization; and
- (f) any event or circumstance affecting an O&M Contractor that constitutes a Force Majeure, excusable delay or similar relief event to the extent that the O&M

Contractor is relieved from the performance of its obligations under the applicable O&M Contract,

provided that:

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

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

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

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

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

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

“HSE” means health, safety and the environment;

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

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

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

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

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

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

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

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

"Initial Service Life" means:

- (a) in respect of the Maritime Link, the Service Life of the Maritime Link as at Sanction of the Maritime Link and as confirmed or adjusted at First Commercial Power, as determined by the joint development committee under the ML-JDA;
- (b) in respect of the LIL, the Service Life of the LIL as at Sanction of the LIL as determined by Nalcor, which shall be confirmed or adjusted to equal the Service Life as at First Commercial Power (as defined in the NLDA in respect of the LIL), as determined by the PUB or other Authorized Authority as provided in the NLDA; and
- (c) in respect of the MFP and the LTA, the Service Life of each such Defined Asset as at Sanction of each such Defined Asset as determined by Nalcor, and as confirmed or adjusted by Nalcor at First Commercial Power (as defined in respect of each such Defined Asset in the NLDA);

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

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

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

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

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies’ Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;
- (c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

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

"Intellectual Property Rights" means:

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

"JOC" means the joint operations committee established pursuant to **Section 3.1**;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"ML Project" has the meaning set forth in the ML-JDA;

"MW" means megawatt;

"MWh" means MW hours;

"Manager" means:

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

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

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

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

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

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

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

“Maritime Link (Nalcor) Transmission Service Agreement” means the agreement of even date herewith between Nalcor and Emera relating to Transmission Rights on the Maritime Link other than in respect of the Nova Scotia Block;

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

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

“NL” means the Province of Newfoundland and Labrador;

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

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

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

“NS” means the Province of Nova Scotia;

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

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

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

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

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

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

“Nalcor Foreground IP” means the Intellectual Property Rights conceived, developed or reduced to practice by Nalcor, its Affiliates or employees of Nalcor or its Affiliates, whether or not Used in the Transmission Assets, the costs of which are Operating and Maintenance Costs (other than costs attributable to the Muskrat Falls Plant), which conception,

development or reduction to practice arose out of performance of Nalcor's O&M Activities, or assigned to Nalcor or its Affiliates by an O&M Contractor pursuant to an O&M Contract;

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

"Nalcor IP" means the Nalcor Background IP and the Nalcor Foreground IP;

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

"New Taxes" means:

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

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

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

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

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

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

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

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

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

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

"O&M Standards" means the policies, procedures, practices and standards established or adopted and Approved by the JOC relating to the operation and maintenance of the Transmission Assets in accordance with Good Utility Practice for a long-term, low cost, reliable transmission facility, including monitoring and reporting on asset performance,

frequency and scope of major inspections, applicable industry standards to apply in asset operation and maintenance, completion of LTAMP, and the maintenance of appropriate critical spares;

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

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

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

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

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

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

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

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

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

- (a) liens or other encumbrances imposed or permitted by Applicable Law such as carriers’ liens, warehousemen’s liens, builders’ liens and other liens or other charges

of a similar nature; provided such liens and other charges relate to obligations not due or delinquent;

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

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

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

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

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

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

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

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

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

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

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

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

“Sanction” means one or more events occurring on a date after the Effective Date when approval by a Party is provided to proceed to the commencement of construction of each of the Defined Assets;

“Service Life” means:

- (a) with reference to the Transmission Assets, the period of time immediately following Commissioning during which each of the Transmission Assets can continue to transmit Energy and Capacity at required reliability levels, and for greater clarity, a

new Service Life will be established upon any Redevelopment of a Transmission Asset; and

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

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

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

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

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

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

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

"Term" has the meaning set forth in **Section 10.1**;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 **Construction of Agreement**

- (a) **Interpretation Not Affected by Headings, etc.** - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number and/or a letter refer to the specified article, section, schedule or appendix

of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document 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)**, each Party shall use commercially reasonable efforts to provide the other Party with all of the information it needs to prepare its accounting records in accordance with US GAAP or Canadian GAAP, as applicable.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a

Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.

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

- (A) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing; and
- (B) the failure, inability or refusal of either Party or both Parties to reach agreement for any reason whatsoever will not constitute a Dispute and such matters are not subject to resolution pursuant to the Dispute Resolution Procedure.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

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

1.5 Schedules

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

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

**ARTICLE 2
TRANSMISSION ASSET MANAGERS AND SYSTEM OPERATORS**

2.1 Transmission Asset Managers

- (a) Operation and Maintenance of NL Transmission Assets - From and after the completion of Commissioning, Nalcor shall, with respect to the NL Transmission Assets:
 - (i) develop and maintain a Long Term Asset Management Plan for the Service Life of the NL Transmission Assets;

- (ii) perform or cause to be performed all O&M Activities;
- (iii) discharge and fulfil, or cause to be discharged and fulfilled, all of the duties and responsibilities of the Manager; and
- (iv) pay all of the Operating and Maintenance Costs,

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

(b) Operation and Maintenance of Maritime Link - From and after the completion of Commissioning, Emera shall, with respect to the Maritime Link:

- (i) develop and maintain a Long Term Asset Management Plan for the Service Life of the Maritime Link;
- (ii) perform or cause to be performed all O&M Activities;
- (iii) discharge and fulfil, or cause to be discharged and fulfilled, all of the duties and responsibilities of the Manager;
- (iv) pay all of the ML O&M Costs; and
- (v) maintain the Maritime Link in the Required Condition,

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

2.2 Relationship with System Operators

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

support instructions that would otherwise breach that Manager's obligations under this Agreement.

ARTICLE 3 JOINT OPERATIONS COMMITTEE

3.1 Establishment and Duration of JOC

Not later than three months after the execution of this Agreement, a joint operations committee for the Transmission Assets shall be established consisting of representatives from each of Nalcor and Emera, the initial members of which shall be named within such period. From time to time the Parties may appoint other representatives in replacement of those initially named.

3.2 JOC Composition, Quorum, Duration and Procedures

- (a) Composition - The JOC shall at all times be comprised of four representatives appointed by Nalcor and two representatives appointed by Emera. Nalcor shall designate one of its representatives on the JOC as the chair. Emera shall designate one of its representatives on the JOC as the vice-chair. Where the chair or vice-chair is unable to act, he or she may from time to time delegate his or her responsibilities to another representative of, respectively, Nalcor or Emera, on the JOC.
- (b) Quorum - Subject to **Section 3.5(k)**, the quorum for the transaction of business by the JOC shall be two Nalcor representatives and one Emera representative.
- (c) Duration - Following its establishment pursuant to **Section 3.1**, the JOC shall continue until the expiry or other termination of the Term.
- (d) Procedures - Except as otherwise provided for in this Agreement, the JOC shall establish procedures for the conduct of its affairs.
- (e) Appointment of Sub-Committees - From time to time, as it deems appropriate, the JOC may appoint standing, due diligence or other teams or sub-committees. Nalcor and Emera are each entitled to have at least one representative appointed to each sub-committee of the JOC.

3.3 Manager Submissions and Responsibilities of the JOC

- (a) Coordination of O&M Activities - The JOC shall meet on a regular basis in order to coordinate the operation and maintenance of the Transmission Assets, as provided in this Agreement.
- (b) JOC Review of Certain Matters - Each Manager, with respect to the Transmission Assets for which it is responsible, shall submit to the JOC in a timely manner the following (the "JOC Matters"):

- (i) the Manager's proposed Annual Maintenance Plans in accordance with **Section 4.2(a)**;
- (ii) not later than four months before the Commissioning of the relevant Transmission Asset, the Operation and Maintenance Manual for that Transmission Asset;
- (iii) Transmission Asset inspection and condition reports completed by the Manager's engineers, original equipment manufacturers, O&M Contractors, lenders' engineers, insurance providers' engineers or other Persons completing such reports;
- (iv) other items to be Approved by the JOC; and
- (v) prior to implementation by the Manager, any changes or updates to any of the foregoing.

The JOC shall review, consider and endeavour to reach consensus as to the JOC Matters submitted by the Managers pursuant to this **Section 3.3(b)**. If the JOC reaches consensus on a JOC Matter, either initially or after revisions requested by the JOC, the JOC Matter will be considered Approved by the JOC and the applicable Manager shall implement the O&M Activities and other matters referred to in the JOC Matter in the manner Approved by the JOC. If the JOC fails to reach consensus on a JOC Matter, the issues preventing consensus shall be resolved pursuant to **Section 3.4**.

- (c) O&M Standards - The JOC, from time to time during the Term, may determine the O&M Standards required by the JOC to be adopted, followed or maintained by the Managers in carrying out the O&M Activities for the Transmission Assets. Any such requirement of the JOC must comply with Good Utility Practice for a long-term, low cost, reliable transmission facility at the relevant time. Each Manager shall implement any such directive of the JOC within such reasonable time as may be set by the JOC.
- (d) Other Information for Coordination - Each Manager, with respect to the Transmission Assets for which it is responsible, shall, in a timely manner and on an ongoing basis during the Term, as and when such information becomes available, submit to the JOC the following ("**O&M Information**"):
 - (i) annually, a list of the material O&M Contracts, including the scopes of work thereunder and names of the O&M Contractors;
 - (ii) copies of material communications with Authorized Authorities relating to operations, including communications with environmental regulators, periodic regulatory reports and correspondence relating to disputes with Authorized Authorities;

- (iii) annually within 30 days after policy renewal, certificates of insurance or other appropriate evidence that the insurance required by **Article 9** is in place;
- (iv) reports of O&M Activities pursuant to **Section 6.4**;
- (v) updates and revisions of the LTAMPs;
- (vi) such other information as the JOC may reasonably require; and
- (vii) in the case of Emera, descriptions of and preliminary cost estimates for any opportunities for Maritime Link Life Extension Projects that may be undertaken as part of the O&M Activities on the Maritime Link.

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

- (e) Approval Conditions Permitted - The JOC may Approve any matters for which its Approval is required under this Agreement subject to such conditions as it may direct, and it may also direct that amendments be made to any matters submitted to it for Approval.
- (f) Support for Approvals - Each Manager shall cause all matters that are to be Approved by the JOC under this Agreement to be brought before the JOC in a timely manner, and shall provide to the JOC all related background information and any other information requested by the JOC.

3.4 JOC Decision Making

- (a) Decision by Consensus - The Nalcor representatives and Emera representatives shall cooperate and share all relevant information so as to reach consensus on issues.
- (b) Resolution of Financial Matters Where No Consensus - Subject to **Section 3.4(e)**, if the JOC is unable to reach a consensus in respect of a Financial Matter pursuant to **Section 3.3(b)**, as confirmed by a vote in accordance with **Section 3.5(j)**:
 - (i) each Party may make separate representations to the Applicable Regulator in respect of the matter, and the Manager responsible for the Financial Matter shall facilitate such representations as provided for in **Section 4.5**;
 - (ii) in any application or submission to an Applicable Regulator with respect to a Financial Matter, the Parties shall jointly request the Applicable Regulator to make its determination of the Financial Matter in a manner consistent with each Party's obligations under this Agreement (including Emera's obligation to maintain the Maritime Link in a manner consistent with its Initial Service Life and to transfer the Maritime Link to Nalcor in the Required Condition); and

- (iii) subject to **Section 3.4(d)**, to the extent that the Applicable Regulator accepts the request of the Parties for a determination and makes a determination of the issue submitted to it, the Applicable Regulator's determination will be final and binding on the Parties, and the Parties shall promptly take such action as may be required to comply with the determination.
- (c) Matters Not Determined by Applicable Regulator - With respect to a Financial Matter in respect of which the JOC fails to reach a consensus, where:
- (i) the matter is not within the power of the Applicable Regulator to determine;
 - (ii) the Applicable Regulator declines to hear the matter or make a determination; or
 - (iii) no application is planned or pending and the nature of the Dispute is such that the Manager required to do the work would not support the application,

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

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

proceeding pursuant to the Dispute Resolution Procedure, as well as the costs of such proceeding.

3.5 Meetings of JOC

- (a) Regular Meetings - The JOC shall meet not less frequently than annually during the Term in accordance with the schedule determined by the JOC, or at such more frequent intervals as the JOC may decide from time to time to be appropriate.
- (b) Calling of Meetings - Either the chair or the vice-chair may call a meeting of the JOC by issuing a notice to the other to that effect. Either Party may request a meeting of the JOC by issuing a notice to the chair or the vice-chair of the JOC to that effect. Upon receiving notice of a requested meeting, the chair or the vice-chair, as applicable, shall promptly call for a meeting by issuing a notice to the other to that effect. Any meeting shall, except as otherwise provided in this Agreement, be for a date not less than five days following the sending of the notice of meeting by the chair or the vice-chair, as applicable.
- (c) Waiver of Notice - Except as otherwise provided for in this Agreement, including those circumstances described in **Section 3.5(d)**, the notice periods set forth in **Sections 3.5(b)** and **3.5(f)** may only be waived with the unanimous consent of the JOC.
- (d) Abridgement of Notice Period - For any situations involving, or potentially involving:
- (i) the actual or imminent threat of loss of life or injury or damage to property or the environment; or
 - (ii) a required response to a notice that must be made prior to the expiry of the notice,
- the advance notice period for calling a meeting of the JOC may be abridged to such period as is reasonable in the particular circumstances, and any such meeting shall nonetheless be considered duly constituted.
- (e) Meeting Notice Particulars - Each notice of a meeting of the JOC (including regular meetings scheduled under **Section 3.5(a)** for which notice shall be provided in accordance with the time limits set out in **Section 3.5(b)**) shall be provided by the chair or vice-chair as determined by the JOC and shall contain:
- (i) the date, time and location of the meeting; and
 - (ii) an agenda of the matters and proposals to be considered at the meeting together with sufficient information to permit the other JOC members to properly and effectively consider the matters to be discussed at such meeting.

- (f) Additions to Agenda - A member of the JOC may, by notice to the other members given not less than three days prior to a meeting of the JOC, add matters to the agenda for that meeting, provided sufficient information is provided with such notice to permit the other JOC members to properly and effectively consider the matters to be discussed at such meeting.
- (g) Non-Agenda Matters - At the request of a member of the JOC, and provided both the chair and the vice-chair or their delegates consent, the JOC may, at any meeting of the JOC, consider and decide on any matter not otherwise on the agenda for that meeting.
- (h) Location of Meetings - Meetings of the JOC shall generally be held in St. John's, NL, and Halifax, NS, and may be held at such other locations as may be determined by the JOC.
- (i) Chair's Duties for Meetings - With respect to meetings of the JOC, the chair's duties shall include:
- (i) timely preparation and distribution of the notice of meeting, the draft agenda and supporting material;
 - (ii) organization and conduct of the meeting; and
 - (iii) preparation of written minutes of the meeting.
- If the chair fails to perform his or her duties, such duties may be performed by the vice-chair.
- (j) Authority to Vote - The JOC shall operate on the basis of consensus, but in order to determine if consensus exists, votes may be required. The representatives of a Party on the JOC must be duly authorized to represent that Party with respect to any matter that is within the powers of and properly before the JOC. The Nalcor representatives and the Emera representatives shall separately determine the positions of Nalcor and Emera respectively, and each representative shall be entitled to one vote. If the two positions are not or cannot be brought to agreement, consensus has not been achieved.
- (k) Failure to Achieve Quorum - If a quorum for a meeting of the JOC is not present at an otherwise duly constituted meeting of the JOC, that meeting shall be adjourned, but may be reconvened upon not less than five days' prior notice given by any member of the JOC to the other members of the JOC, and at such subsequent meeting the persons attending shall constitute a quorum.
- (l) Advisors - Each Party may, at its cost, or as otherwise agreed by the Parties, also bring to any JOC meeting such reasonable number of technical and other advisors it considers necessary or appropriate to address the matters being considered at the meeting.

- (m) Telephone or Video Conference Meetings - Participation in JOC meetings for purposes of determining a quorum and otherwise may be by telephone or other electronic telecommunication or video conference device that permits all Persons participating in the meeting to hear and communicate with each other simultaneously, and all Persons so participating shall be considered present at that meeting for all purposes.
- (n) Minutes - The chair or the vice-chair presiding at a meeting of the JOC shall provide each member of the JOC with draft minutes of each JOC meeting within 14 days following the meeting. The minutes shall be considered for approval at the next meeting of the JOC.

3.6 Resolution in Writing

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

3.7 Decisions of JOC Binding

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

3.8 Costs of JOC Participation

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

ARTICLE 4 PERFORMANCE OF O&M ACTIVITIES

4.1 Managers' Responsibilities

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

- (a) exercise final operational responsibility and control for the Transmission Asset, except as otherwise provided in this Agreement;
- (b) in the conduct of all O&M Activities for which it is responsible, considering the remaining Service Life and, in the case of the Maritime Link, the Required Condition:
 - (i) apply methods and practices customarily applied in other similar circumstances;
 - (ii) exercise that degree of care, skill and diligence reasonably and ordinarily exercised by experienced utility operators engaged in similar activities under similar circumstances and conditions;

- (iii) comply with all regulatory requirements of the Applicable Regulator; and
- (iv) comply with Good Utility Practice;
- (c) ensure that all O&M Activities are performed pursuant to the applicable Annual Maintenance Plan Approved by the JOC, with only those variations as are necessary and appropriate for the operation and maintenance of the Transmission Asset in accordance with Good Utility Practice;
- (d) provide adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory, technical and administrative personnel to perform its obligations, including professional engineers and procurement, project management and operating and maintenance personnel;
- (e) obtain and maintain in good standing all required Regulatory Approvals;
- (f) comply with all Applicable Law (including System Operator rules to the extent applicable), reliability standards as required by the applicable Authorized Authority in the Manager's jurisdiction, and relevant Regulatory Approvals; and
- (g) in the case of Emera with respect to the Maritime Link, maintain all Facility Real Property Interests in full force and effect, including enforcing Emera's rights under the Facility Real Property Interests against third parties, and in the case of Nalcor, maintain and enforce its similar interests relating to the NL Transmission Assets.

4.2 **Annual Maintenance Plan**

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

4.3 Operations & Maintenance Manual

- (a) Preparation of Manual - Each Manager, with respect to the Transmission Assets for which it is responsible, shall prepare and maintain an Operations and Maintenance Manual setting out the policies and procedures it shall adopt and implement in carrying out the O&M Activities. The content of the Operation and Maintenance Manual shall be consistent with requirements of this Agreement and shall provide for the operation and maintenance of the Transmission Assets in accordance with the O&M Standards. During the Term, each Manager shall remain responsible for its Operation and Maintenance Manual and shall keep it current by making necessary updates, supplements or revisions thereto to reflect the O&M Standards. Each Manager shall promptly supply the JOC with one copy of any such updates, supplements or revisions in a form established by the JOC.
- (b) Effect of JOC Approval - Neither the JOC's review of or comment upon nor failure to comment upon, nor Approval of, the Operation and Maintenance Manual shall relieve the Manager of any of its responsibilities under this Agreement, be deemed to constitute a determination by the JOC that operating the Transmission Assets pursuant to the Operation and Maintenance Manual will cause the Transmission Assets to be in compliance with this Agreement and the O&M Standards, or impose any liability upon either Party with respect to the Transmission Asset under the other Party's responsibility or the other Party's O&M Activities.

4.4 Operation and Maintenance Contractors

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

4.5 Regulatory Approvals

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

other Authorized Authority and the UARB to ensure that they have an opportunity to make representations to either the UARB or the PUB or other Authorized Authority, as the case may be.

4.6 Safety

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

4.7 Shared Use of Transmission Corridor

The Facility Real Property Interests in NL and in the seabed of the Cabot Strait shall not be used by Emera for any purpose other than the Maritime Link without Nalcor's prior written consent, which shall not be unreasonably withheld. If mutually agreed by the Parties, Nalcor or an Affiliate of Nalcor and Emera may enter into a sharing and utilization agreement regarding such Facility Real Property Interests, a term of which would be that any such shared use by Emera must have no adverse impact on the use, operation, maintenance, repair or rehabilitation of the Maritime Link during its Service Life or its decommissioning and removal at the end of its Service Life. **Section 1.2(m)(ii)** applies to this **Section 4.7**.

4.8 Maritime Link Life Extension Projects

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

ARTICLE 5 FINANCIAL AND OTHER ARRANGEMENTS

5.1 Initial LTAMP and LTAMP Cost Estimates

- (a) Nalcor Initial LTAMPs - At least 45 days before the earlier of (i) Sanction by Nalcor of the first of the Defined Assets, other than the Maritime Link, and (ii) submission by Emera to the UARB of the NS Regulatory Application pursuant to Section 5.2 of the ML-JDA, Nalcor shall prepare and submit to Emera a preliminary Long-Term Asset

Management Plan (“**Initial LTAMP**”) for each of the Muskrat Falls Plant and the NL Transmission Assets, together with corresponding Initial LTAMP Cost Estimates. Within 15 days after receipt of Nalcor’s Initial LTAMPs and Initial LTAMP Cost Estimates, Emera shall review them and provide any comments in writing to Nalcor. Within 15 days after receipt of Emera’s comments, if any, Nalcor may, in its sole and absolute discretion, make modifications to its Initial LTAMPs and Initial LTAMP Cost Estimates and provide revised versions to Emera.

- (b) Emera Initial LTAMP - At least 45 days before the earlier of (i) Sanction by Emera of the Maritime Link, and (ii) submission by Emera to the UARB of the NS Regulatory Application pursuant to Section 5.2 of the ML-JDA, Emera shall prepare and submit to Nalcor an Initial LTAMP for the Maritime Link, together with a corresponding Initial LTAMP Cost Estimate. Within 15 days after receipt of Emera’s Initial LTAMP and Initial LTAMP Cost Estimate, Nalcor shall review them and provide any comments in writing to Emera. Within 15 days after receipt of Nalcor’s comments, if any, Emera may, in its sole and absolute discretion, make modifications to its Initial LTAMP and Initial LTAMP Cost Estimate and provide revised versions to Nalcor.

5.2 In-Service LTAMPs and LTAMP Cost Estimates

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

Resolution Procedure. The Parties are deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve any such Dispute by arbitration.

- (c) Consolidation of Disputes - If there are concurrent Disputes as to any of Nalcor's In-Service LTAMPs pursuant to **Section 5.2(a)** and Emera's In-Service LTAMP pursuant to **Section 5.2(b)**, or if concurrently with any such Dispute there is a Dispute under **Section 5.5(c)**, the resolution of all such Disputes shall be consolidated pursuant to the Dispute Resolution Procedure.

5.3 No Role of JDC-ML

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

5.4 Financial Principles

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

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

- (ii) Taxes imposed pursuant to the *Income Tax Act* (Nova Scotia) or the *Income Tax Act* (Newfoundland and Labrador); and
- (iii) Taxes to the extent that they are refundable, rebateable or otherwise recoverable.

5.5 Adjustments Regarding Operating and Maintenance Costs

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

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

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

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

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

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

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

(b) Payment of Adjustment - Within 30 days after the In-Service LTAMP Cost Estimates have been finalized pursuant to **Section 5.2**, the Parties shall calculate the Present Worth of the Nalcor Payment Amounts and the Present Worth of the Emera Payment Amounts and:

- (i) if the Present Worth of the Nalcor Payment Amounts exceeds the Present Worth of the Emera Payment Amounts, Nalcor shall pay the amount of the difference to Emera; or
- (ii) if the Present Worth of the Emera Payment Amounts exceeds the Present Worth of the Nalcor Payment Amounts, Emera shall pay the amount of the difference to Nalcor.

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

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

5.6 CEO Override Costs

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

- (a) Identification of O&M Activities - Emera shall separately identify in its Annual Maintenance Plan for each Operating Year any O&M Activities to be carried out in that Operating Year that will give rise to Unrecovered Additional O&M Costs;
- (b) Cost Estimate - When Emera provides an Annual Maintenance Plan referred to in **Section 5.6(a)** to the JOC for an Operating Year, Emera shall provide to Nalcor an estimate of the Unrecovered Additional O&M Costs Emera expects to incur during that Operating Year, together with reasonable details of the related O&M Activities;
- (c) Dispute by Nalcor - If Nalcor disputes its liability pursuant to the applicable determination made pursuant to Section 3.2(f) of the ML-JDA for all or any portion of the Unrecovered Additional O&M Costs claimed by Emera pursuant to **Section 5.6(b)**, it shall give Notice thereof to Emera within 30 days after Nalcor's receipt of Emera's cost estimate pursuant to **Section 5.6(b)**. If Nalcor gives such Notice and the Parties are unable to resolve any disagreement within 30 days thereafter, or such extended period as may be agreed in writing by the Parties, the matter shall be submitted by the Parties for resolution pursuant to the Dispute Resolution Procedure.
- (d) Review by Nalcor - Before making commitments to carry out O&M Activities that will result in Emera incurring Unrecovered Additional O&M Costs, Emera shall permit Nalcor to review and comment on Emera's plans and cost estimates for such O&M Activities and, acting reasonably, shall take into consideration any recommendations

Nalcor may provide to avoid or minimize the amount of such Unrecovered Additional O&M Costs;

- (e) Invoicing - As and when Emera incurs Unrecovered Additional O&M Costs that are for Nalcor's account pursuant to this **Section 5.6**, Emera shall invoice Nalcor for such Unrecovered Additional O&M Costs in accordance with **Section 5.8**; and
- (f) Work Performed by Nalcor - At Nalcor's request, and when commercially reasonable having regard to Emera's obligations under this Agreement, Emera shall permit Nalcor or an Affiliate of Nalcor to perform work at Nalcor's expense that would otherwise be for Nalcor's account pursuant to this **Section 5.6**, subject to reasonable terms and conditions governing the performance of such work, as mutually agreed by the Parties. **Section 1.2(m)(i)** applies to the foregoing sentence. The reasonable terms and conditions governing the performance of the work completed by Nalcor shall include warranties and indemnities from Nalcor in favour of Emera for any Claims arising from Nalcor's performance of work pursuant to this **Section 5.6(f)**, consistent with those normally obtained by Emera from third party contractors performing similar work for Emera. Nalcor shall release Emera from liability for the breach of any of Emera's obligations under any of the other Formal Agreements to the extent that such a breach arises as a result of Nalcor's performance of the work pursuant to this **Section 5.6(f)**.

5.7 Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 5.7(c)**:
 - (i) Emera shall pay or cause to be paid all Taxes on or with respect to the Maritime Link which accrue or are payable on or after the date of Emera Sanction (as defined in the ML-JDA) and on or before the Transfer Date;
 - (ii) Nalcor shall pay or cause to be paid all Taxes on or with respect to the Maritime Link which are both accrued and payable after the Transfer Date;
 - (iii) notwithstanding **Sections 5.7(b)(i)** and **5.7(b)(ii)**, to the extent so provided in the other Formal Agreements, Nalcor or Emera, as applicable, shall pay or caused to be paid all Taxes imposed by any Authorized Authority on or with respect to transmission supplies, Tariff Charges or Energy and Capacity transmitted on the Maritime Link pursuant to such other Formal Agreements;
 - (iv) for greater certainty, except as provided in the Formal Agreements, Emera shall not be obligated to pay any Taxes in respect of the MFP, the LTA or the LIL;

- (v) if Nalcor is required by Applicable Law to remit or pay Taxes which are Emera's responsibility hereunder, Nalcor shall first offset the amount of Taxes so recoverable from other amounts owing by it to Emera under this Agreement, and Emera shall promptly reimburse Nalcor for such Taxes to the extent not so offset;
 - (vi) if Emera is required by Applicable Law to remit or pay Taxes which are Nalcor's responsibility hereunder, Emera shall first offset the amount of Taxes so recoverable from other amounts owing by it to Nalcor under this Agreement, and Nalcor shall promptly reimburse Emera for such Taxes to the extent not so offset; and
 - (vii) nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.
- (c) HST - Notwithstanding **Sections 5.7(a)** and **5.7(b)**, the Parties acknowledge and agree that:
- (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;
 - (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to the other Party, such amount shall first be increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
 - (iii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other Party such documentation required pursuant to **Section 5.7(h)**; and
 - (iv) if one Party incurs an expense as agent for the other Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 5.7(b)**, **5.7(c)**, **5.7(e)** and **5.7(f)**, New Taxes payable in respect of the Maritime Link shall be payable as follows:

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

For greater certainty,

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

- (i) all real property taxes (including any civic or local improvement assessments) as exigible in respect of real property located in NS and forming part of, or used for, the Maritime Link;
 - (ii) any requisite grants in lieu of real property taxes in respect of real property located in NS and forming part of, or used for, the Maritime Link, whether payable by Emera or by one of its Affiliates;
 - (iii) all applicable land or deed transfer taxes, registration fees and similar taxes and fees payable in respect of transfers of interests in real property located in NS or for the registration of deeds for the conveyance of real property (or for the registration of any other form of indenture creating a real property right or interest, or notice thereof), for real property located in NS and forming part of, or used for, the Maritime Link; and
 - (iv) any other Tax imposed on Emera or its property or business under Applicable Law in NS, including any such Tax which is for the benefit of a municipality, municipal area, school board or local school.
- (g) Determination of Value for Tax Compliance Purposes
- (i) Subject to the right of final determination as provided under **Section 5.7(g)(ii)** the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
 - (ii) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.
- (h) Invoicing - All invoices, as applicable, issued pursuant to **Section 5.8** shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:
- (i) the HST registration number of the supplier;
 - (ii) the subtotal of all HST taxable supplies;

- (iii) the applicable HST rates and the amount of HST charged on such HST taxable supplies; and
 - (iv) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.
- (i) Payment and Offset
- (i) Subject to **Section 5.7(i)(ii)**, Taxes collectable by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
 - (ii) A Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.
- (j) HST Registration Status and Residency
- (i) Nalcor represents and warrants that it is registered for purposes of the HST and that its registration number is 837364611, and undertakes to advise Emera of any change in its HST registration status or number.
 - (ii) Emera represents and warrants that it is registered for purposes of the HST and that its registration number is 868143132, and undertakes to advise Nalcor of any change in its HST registration status or number.
 - (iii) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Emera of any change in its residency status.
 - (iv) Emera represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Nalcor of any change in its residency status.
- (k) Cooperation to Minimize Taxes - Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Law, so long as neither Party is materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Law in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).

- (l) Additional Tax Disclosure - Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide to the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:
- (i) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
 - (ii) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and
 - (iii) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

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

- (m) Prohibited Tax Disclosure - Except as required by Applicable Law, notwithstanding any other provision of this Agreement, each Party shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of the other Party to an Authorized Authority without the prior written consent of such other Party.
- (n) Withholding Tax - If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Law, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, the Party shall deliver to the other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of the other Party.

- (o) **Tax Indemnity** - Each Party (in this **Section 5.7(o)** referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Section 5.7** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 5.7(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:
- (i) any and all Taxes imposed by any Authorized Authority on the other Party in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein; and
 - (ii) any and all Taxes imposed by any Authorized Authority in respect of the supplies contemplated by this Agreement, and any and all Claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein.
- (p) **Additional Tax Indemnity** - If one Party (in this **Section 5.7(p)** referred to as the “**First Party**”) is, at any time, a non-resident of Canada for the purposes of the Income Tax Act or the Applicable Law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this **Section 5.7(p)** referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:
- (i) any such amount payable by the other Party pursuant to this **Section 5.7(p)** shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
 - (ii) for greater certainty, this **Section 5.7(p)** shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

- (q) Assignment - Tax Requirements - Notwithstanding any other provision in this Agreement, except as otherwise agreed to by the Parties in writing, a Party shall not assign any of its interest in this Agreement to another Person unless:
- (i) the Person is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such Assignment;
 - (ii) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Person; and
 - (iii) the Person agrees, in writing, to comply with the provisions of this **Section 5.7**.

5.8 Invoicing and Payment

- (a) Invoices - Unless otherwise provided in this Agreement with respect to specific payments, the calendar month is the standard period for invoicing amounts payable by a Party (the “**Payor**”) to the other Party (the “**Payee**”) hereunder. On or before the 15th day of each calendar month, the Payee shall provide an invoice to the Payor for all amounts in respect of the preceding month chargeable by the Payee to the Payor and, subject to **Section 5.8(h)**, any amounts not previously invoiced to the Payor. The Payee shall provide with the invoice such supporting documents and information as the Payor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced (the “**Supporting Material**”).
- (b) Disputed Amounts - Within 30 days after receipt of an invoice from the Payee, the Payor shall report in writing to the Payee any disputed amounts in the invoice, specifying the reasons therefor.
- (c) Time and Method of Payment - Within 30 days after its receipt of a properly prepared invoice, accompanied by acceptable Supporting Material, the Payor shall pay to the Payee the amount stated on the invoice less any amounts disputed pursuant to **Section 5.8(b)** and any withholding required by Applicable Law. The Payor shall make payment by electronic funds transfer or other mutually agreed method to an account designated by the Payee.
- (d) Effect of Payment - Notwithstanding **Section 5.8(b)**, payment of an invoice will not prejudice the right of the Payor to dispute the correctness of the invoice for a period of up to two years after the end of the calendar year in which the Payor received the invoice. Failure by the Payor to dispute charges will not be deemed to be acceptance of the charges or preclude the Payor from subsequently disputing an amount or conducting an audit of the charges within two years after the end of the calendar year in which the Payor received the invoice. Any charges not disputed in writing by the Payor within two years after the end of the calendar year in which the Payor received the invoice for such charges will conclusively be presumed to be true and correct.

- (e) Resolution of Objections - The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after the Payee's receipt of a notification of disputed amounts pursuant to **Section 5.8(b)**. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, the Payor shall pay any amount determined to be owing to the Payee within five Business Days after the Payor receives an invoice from the Payee for such amount.
- (f) Overpayments - Within 15 Business Days after a Payee's discovery or receipt of written evidence of an overpayment, the Payee shall refund the overpayment to the Payor.
- (g) Interest on Overdue Amounts - Any amount not paid by either Party when due, including any charge disputed by the Payor pursuant to **Section 5.8(b)** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 5.8(c)**, and any refund of an overpayment pursuant to **Section 5.8(f)**, will bear interest at the Prime Rate plus three percent per annum, calculated daily not in advance, from the date upon which the payment became due to and including the date of payment, and interest accrued will be payable on demand.
- (h) Waiver of Unbilled Charges - If a Payee entitled to payment in respect of an amount paid by the Payee to a third party fails to invoice the Payor pursuant to this **Section 5.8** for such amount within six months after the date the Payee made payment to the third party, the right to such payment by the Payor is waived. Notwithstanding the foregoing, a Party may recover Taxes pursuant to a statutory right to recover such Taxes, including the right to recover HST pursuant to Section 224 of the Excise Tax Act.

5.9 Not Create Encumbrances

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

ARTICLE 6 INFORMATION, ACCESS AND REPORTING

6.1 Records and Audits

Each Manager shall keep complete and accurate records and all other data required by either of them for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records

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

6.2 Access and Information

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

6.3 Restriction

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

6.4 Reporting Obligations

- (a) O&M Activities - Within 90 days after the end of each Operating Year, each Manager, in respect of the Transmission Assets for which it is responsible, shall provide the JOC with a report with respect to that Manager's O&M Activities during

each such period, in such form as may be required by the JOC. The report shall include a summary of operations, including information in reasonable detail concerning:

- (i) the Transmission Asset's Energy and Capacity transferred and availability during such period;
 - (ii) O&M Activities during such period;
 - (iii) variances from the Annual Maintenance Plan;
 - (iv) capital projects and progress against schedule of capital related activities during such period; and
 - (v) any material developments during such period in the operation of the Transmission Assets, including material technical problems, discovery of any material defects in the physical plant and equipment of the Transmission Assets, environmental issues, material interruptions to operation of the Transmission Assets, and material disputes with any Authorized Authority (including Tax authorities) or material labour difficulties related to the Transmission Assets.
- (b) Communications with Authorized Authorities - Each Manager, with respect to the Transmission Assets for which the Manager is responsible, shall, upon request by either Party, provide the other Party with copies of all communications and correspondence to any and all Authorized Authorities. Notwithstanding the foregoing, subject to the Parties' rights with respect to Financial Matters, the Manager shall be responsible for communications and correspondence to any and all Authorized Authorities with respect to the Transmission Assets for which the Manager is responsible.
- (c) Reliability Incident Reports - Promptly following the occurrence of a Reliability Incident affecting a Transmission Asset, the Manager of that Transmission Asset shall provide a written report to the JOC explaining the nature of the problem, the expected duration of any interruption of service, details of any failed equipment, and such other information as the JOC may reasonably require. When the problem that caused the Reliability Incident has been corrected, the applicable Manager shall provide the JOC with a further written report describing the measures taken to correct the problem and prevent its recurrence.

ARTICLE 7

REQUIRED CONDITION AND TRANSFER OF MARITIME LINK AT END OF TERM

7.1 Emera Obligation to Transfer at End of Term

- (a) Transfer to Nalcor - On or as soon as reasonably possible after the Expiry Date, Nalcor shall acquire and purchase from Emera and Emera shall, or shall cause its

Affiliates to, sell and transfer to Nalcor ownership of the Maritime Link for a purchase price of \$1.00. At the time of the closing of the transaction pursuant to this **Section 7.1** (the “**Transfer Closing**”). Emera shall or shall cause its Affiliates to convey, to Nalcor all of Emera’s right, title and interest in and to:

- (i) the Maritime Link, including all Facility Real Property Interests; and
 - (ii) the Maritime Link (Nalcor) Transmission Service Agreement,
- free of all Encumbrances.
- (b) Interests Held in Trust - Without limiting **Section 7.2** or any obligation of Emera under this Agreement, if any assignment, transfer or delivery to Nalcor of any asset, right or entitlement required pursuant to this **Section 7.1** cannot be completed prior to or at the time of the Transfer Closing:
- (i) Emera shall make commercially reasonable efforts to complete such assignment, transfer or delivery as soon as possible after the Transfer Closing; and
 - (ii) pending the effective completion of such assignment, transfer or delivery, Emera shall hold such asset, right or entitlement in trust for the exclusive benefit of Nalcor.
- (c) Closing Documents - Emera shall execute and deliver at the Transfer Closing any and all such documentation and instruments as may be necessary or appropriate to effect the transfer of the Maritime Link pursuant to this **Section 7.1**.
- (d) Regulatory Approvals - Each Party shall use commercially reasonable efforts to obtain and to assist the other Party in obtaining, in a timely manner and so as not to delay or prevent the Transfer Closing, all Regulatory Approvals required in connection with the transfer of the Maritime Link to Nalcor pursuant to this **Section 7.1**.
- (e) Transfer Closing - The Transfer Closing shall take place at a mutually agreed location in Halifax, Nova Scotia, on the date that is the latest to occur of:
- (i) the Expiry Date; or
 - (ii) on the fifth Business Day following receipt of all Regulatory Approvals necessary to effect the transfer of the Maritime Link to Nalcor pursuant to this **Section 7.1**.
- (f) Transfer of Responsibility - Emera shall remain solely responsible for the performance of all O&M Activities and payment of all ML O&M Costs in respect of the period up to and including the Transfer Date. Nalcor shall assume sole responsibility for O&M Activities and for all ML O&M Costs incurred in respect of the

period after the Transfer Date. If the Transfer Closing occurs after the Expiry Date, the Parties shall make such adjustments on the Transfer Closing as may be appropriate to allocate ML O&M Costs in respect of the period after the Expiry Date in accordance with this **Section 7.1(f)**.

- (g) Release and Indemnity by Nalcor - Subject to any liabilities of Emera pursuant to **Section 7.2**, Nalcor shall be responsible for, and shall hold harmless, protect, release, defend and indemnify the Emera Group from all ML O&M Costs, liabilities, obligations, costs and expenses that are incurred or accrued after the Transfer Date as a result of any O&M Activities on or Operation and Maintenance Costs of the Maritime Link, or other activities on or relating to any of the Maritime Link, the ML Project or any Maritime Link Site.

7.2 Emera Liability after Transfer Date

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

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

7.3 Performance of Work

- (a) Nalcor Right to Carry out Work - Subject to **Section 7.3(b)**, without limiting any other right or remedy Nalcor may have, Nalcor may perform or cause to be performed any or all work after the Transfer Date, and provided that Emera is liable for such work pursuant to **Section 7.2** Emera shall reimburse to Nalcor from time to time upon receipt of Nalcor's invoices and reasonable supporting documentation, all costs, including labour, material and overhead reasonably incurred by Nalcor to complete such remaining work plus a reasonable profit, plus a further mark-up of 20% of such costs.

- (b) Performance of Work by Emera - Prior to performing any work pursuant to **Section 7.3(a)**, Nalcor shall give Notice to Emera of the work required and Emera may, within 10 Business Days following receipt of such Notice, elect by Notice to Nalcor to perform, or to cause its Affiliates to perform, the work specified in Nalcor's Notice, at Emera's sole cost and expense, specifying the means by which and the time within which Emera shall perform the work or cause it to be performed. Emera shall proceed to carry out the work (i) in accordance with Emera's proposal, (ii) in a good and workmanlike and timely manner, and (iii) in accordance with Good Utility Practice. In performing such work, Emera shall not unreasonably interfere with Nalcor's operations relating to the Maritime Link and shall not compromise the safety of persons or property. While accessing the Maritime Link, all representatives of Emera shall follow all rules and procedures established by Nalcor for contractors working on the site, including those related to safety and security.

7.4 Transition to Nalcor of O&M Activities

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

it so elects, may seek to engage each O&M Contractor on substantially the same terms as those upon which each had been contracted by Emera;

- (iii) deliver to Nalcor a list of:
 - (A) all items specially designed for the Maritime Link previously delivered or fabricated by Emera or any O&M Contractor and intended to be but not yet incorporated in the Maritime Link ("**Special Items**"); and
 - (B) all other supplies, materials, machinery, equipment and special tools specifically designed for use in the operation or maintenance of the Maritime Link; and
 - (iv) advise Nalcor of any special circumstances which might limit or prohibit cancellation of any O&M Contract.
- (d) Obligations at End of Term - Immediately upon the expiration or other termination of the Term, Emera shall, as an obligation under this Agreement which survives the Term, and for no consideration, do or cause to be done the following:
- (i) transfer and deliver to Nalcor all ML Data, including the Operation and Maintenance Manuals;
 - (ii) transfer and deliver to Nalcor all or any, as determined by Nalcor, of the existing materials and supplies utilized by Emera in the operation and maintenance of the Maritime Link;
 - (iii) promptly remove from the Maritime Link Sites all equipment, implements, machinery, tools, temporary facilities of any kind and other property owned or leased by Emera which are not to be transferred to Nalcor, and repair any damage caused by such removal;
 - (iv) promptly remove all employees of Emera and any O&M Contractors, other than those whose O&M Contracts have been assigned to Nalcor, and vacate the Maritime Link Sites, subject to **Section 7.4(e)**, provided that all employees of Emera who customarily spend substantially all of their working time engaged in O&M Activities shall be permitted by Emera to take employment with Nalcor;
 - (v) surrender possession, control and operation of the Maritime Link and all facilities, appurtenances and fixtures contained or attached to the Maritime Link Sites and deliver to Nalcor, the Maritime Link and all facilities, appurtenances and fixtures contained in or attached to the Maritime Link Sites free and clear of all Encumbrances;

- (vi) at Nalcor's option, in its sole and absolute discretion, assign to Nalcor or as directed by Nalcor all of Emera's right, title and interest in and to any O&M Contract, whether such O&M Contract is cancelled or not;
 - (vii) as directed by Nalcor, transfer to Nalcor by appropriate instruments of title, and deliver to such place as Nalcor may specify, all Special Items;
 - (viii) furnish to Nalcor all information used in the preparation of reports and other data necessary for Nalcor to operate the Maritime Link, and use commercially reasonable efforts to obtain the consent of any third party required to fulfill such obligation;
 - (ix) notify Nalcor in writing of any Legal Proceedings against Emera by any O&M Contractor relating to the termination of the O&M Activities or any O&M Contract;
 - (x) use commercially reasonable efforts to have all licences and permits relating to the Maritime Link or the O&M Activities, to the extent transferable, transferred to Nalcor, and to the extent non-transferable, to assist in having such licences and permits issued to Nalcor so that Nalcor shall be in a position to operate the Maritime Link without interruption;
 - (xi) assist Nalcor in such other manner as Nalcor may require to ensure the orderly transition of control and operation of the Maritime Link; and
 - (xii) take such other commercially reasonable actions, and execute such other documents, as may be necessary to effectuate and confirm the foregoing matters.
- (e) Technical Assistance - Emera shall provide, and shall use commercially reasonable efforts to cause its O&M Contractors to provide, technical advice and support to Nalcor. Such advice and support shall be for a period of six months prior to the transfer of the Maritime Link to Nalcor pursuant to **Section 7.1** and shall include providing any plans, drawings, renderings, blueprints, operating and training manuals for all facilities, personnel information, specifications or other information useful or necessary for Nalcor. In addition, to the extent requested by Nalcor, Emera shall use commercially reasonable efforts to retain any or all key operating and management employees and make them available following termination or expiration of this Agreement to provide on-site, real-time consulting advice to Nalcor.

7.5 Transfer on Early Termination

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

ARTICLE 8 FORCE MAJEURE

8.1 Force Majeure

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

- (a) forthwith Notify the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;
- (b) be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;
- (c) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;
- (d) as soon as reasonably possible after such Force Majeure, fulfil or resume fulfilling its obligations hereunder;
- (e) provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and
- (f) not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.

ARTICLE 9 INSURANCE

9.1 Insurance Program

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

9.2 Coverages, Limits, Deductibles and Exclusions

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

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

9.3 Liability and Property Coverage

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

9.4 Other Requirements

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

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

9.5 **Lender Requirements**

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

9.6 **Evidence of Insurance**

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

9.7 **Placement of Required Insurance**

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

9.8 **Effect of Failure to Insure**

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

9.9 **Site Visits**

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

9.10 **Corporate Policies**

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

ARTICLE 10
TERM AND TERMINATION

10.1 **Term**

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

10.2 Termination

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

- (a) Nalcor does not Sanction the MFP, the LTA or the LIL;
- (b) Emera Non-Sanction, as defined in the ML-JDA;
- (c) the 35th anniversary of First Commercial Power;
- (d) written agreement of the Parties to terminate;
- (e) all of the Transmission Assets are owned by Nalcor or its Affiliates; or
- (f) the Energy and Capacity Agreement is terminated.

10.3 Effect of Termination

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

- (v) any other obligations that survive pursuant to **Section 18.13**.

**ARTICLE 11
DEFAULT AND REMEDIES**

11.1 Emera Events of Default

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

- (a) Emera fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Nalcor that such amount is due and owing;
- (b) Emera is in breach of **Section 5.9** and such breach remains uncured for a period of 30 days (or if the breach is capable of being cured and Emera is diligently pursuing the cure, such longer period of time as is agreed by Nalcor);
- (c) a distress or execution or similar legal process is levied or enforced upon or against any part of the Maritime Link, and the same remains unsatisfied for a period of 30 days (or if the legal process is capable of being cured, and Emera is diligently pursuing the cure, such longer period of time as is agreed by Nalcor);
- (d) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 11.1(a), 11.1(b) or 11.1(c)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor, unless the cure reasonably requires a longer period and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor;
- (e) any representation or warranty made by Emera in this Agreement is false or misleading in any material respect;
- (f) Emera ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and
- (g) any Insolvency Event occurs with respect to Emera.

11.2 Nalcor Remedies upon Emera Event of Default

- (a) General - Upon the occurrence of an Emera Default and at any time thereafter, provided Nalcor is in material compliance with its obligations under this Agreement and provided a right, remedy or recourse is not expressly stated in this Agreement as being the sole and exclusive right, remedy or recourse:

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

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

- (b) Discharge of Encumbrances - Upon the occurrence of an Emera Default referred to in **Section 11.1(b)**, Nalcor may, without obligation to do so, make payment on behalf of Emera of such monies as may be required to obtain a discharge and release of any Encumbrance, other than a Permitted Encumbrance, affecting the Maritime Link and any amount so paid by Nalcor shall bear interest at the Prime Rate plus 10% per annum from the date of advance and be payable by Emera to Nalcor on demand.
- (c) Losses - Subject to **Article 13**, Nalcor may recover all Losses suffered by Nalcor that are due to an Emera Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Nalcor to recover any amounts owed to Nalcor by Emera under this Agreement.

11.3 Nalcor Events of Default

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

- (a) Nalcor fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Emera that such amount is due and owing;
- (b) a distress or execution or similar legal process is levied or enforced upon or against any part of any of the Defined Assets other than the Maritime Link, and the same remains unsatisfied for a period of 30 days (or if the legal process is capable of being cured, and Nalcor is diligently pursuing the cure, such longer period of time as is agreed by Emera);
- (c) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 11.3(a)** or **11.3(b)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera;

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

11.4 Emera Remedies upon Nalcor Event of Default

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

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

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

11.5 Equitable Relief

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

ARTICLE 12 LIABILITY AND INDEMNITY

12.1 Nalcor Indemnity

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

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

12.2 Emera Indemnity

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

12.3 Own Property Damage

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

12.4 Indemnification Procedure

- (a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 12.1** or **12.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 12.4**.
- (b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 12.4** at the Indemnitor's own

expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.

- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 12.4(h)**.
- (e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.
- (f) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its representatives all books, records,

documents and other materials and shall use all reasonable efforts to provide access to its employees and make such employees available as witnesses as reasonably required by the Indemnitor for its use in defending any Third Party Claim and shall otherwise co-operate to the fullest extent reasonable with the Indemnitor in the defence of such Third Party Claim. The Indemnitor shall be responsible for all reasonable third party expenses associated with making such books, records, documents, materials, employees and witnesses available to the Indemnitor or its representatives.

- (g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.
- (h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 12.4** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

12.5 Insurer Approval

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

ARTICLE 13 LIMITATION OF DAMAGES

13.1 Limitations and Indemnities Effective Regardless of Cause of Damages

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

13.2 **No Consequential Loss**

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement or the O&M Activities, except that such consequential, incidental, indirect or punitive damages awarded against a member of the Nalcor Group or the Emera Group, as the case may be, with respect to matters relating to the O&M Activities, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 13.2**. For the purposes of this **Section 13.2**, lost revenues or profits in relation to the purchase or sale of Energy or Capacity shall not be considered to be consequential, incidental or indirect damages, provided however that a Party must still establish such lost revenues or profits in accordance with Applicable Law.

13.3 **Insurance Proceeds**

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

13.4 **No Breakage or Other Similar Financing Costs Permitted**

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

ARTICLE 14
REPRESENTATIONS AND WARRANTIES

14.1 **Nalcor Representations and Warranties**

Nalcor represents and warrants to Emera that, as of the 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.

14.2 Emera Representations and Warranties

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

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Emera and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;
- (c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

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

ARTICLE 15
CONFIDENTIALITY AND INTELLECTUAL PROPERTY

15.1 **Incorporation of Project NDA**

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

15.2 **Disclosure of Agreement**

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

15.3 **Intellectual Property**

- (a) Rights Created by or for Emera - Emera shall be the first owner of all Emera Foreground IP.
- (b) Rights Created by or for Nalcor - Nalcor shall be the first owner of all Nalcor Foreground IP.
- (c) Assignment to Nalcor of Emera Foreground IP in the NL Transmission Assets - In the event Emera or any of its Affiliates is contracted by Nalcor or its Affiliates to do work on the NL Transmission Assets, and such work results in Emera Foreground IP, then

effective and conditional upon payment for such work by Nalcor or its Affiliates, Emera hereby assigns to Nalcor, all of its right, title and interest in such Emera Foreground IP, free and clear of all Encumbrances, other than the licences and restrictions granted and continuing pursuant to this **Article 15**.

- (d) Assignment to Emera of Nalcor Foreground IP in the Maritime Link - In the event Nalcor or any of its Affiliates is contracted by Emera or its Affiliates to do work on the Maritime Link, and such work results in Nalcor Foreground IP, then effective and conditional upon payment for such work by Emera or its Affiliates, Nalcor hereby assigns to Emera, all of its right, title and interest in such Nalcor Foreground IP, free and clear of all Encumbrances, other than the licences and restrictions granted and continuing pursuant to this **Article 15**.
- (e) O&M Owned IP Held in Trust - Each of Emera and Nalcor shall hold the O&M Owned IP owned by such Party, at any given time, in trust for the mutual benefit of Emera and Nalcor, and such Party shall have no right to license the O&M Owned IP to any third party except in accordance with **Section 15.5(c)**.
- (f) Grant of Licence - Subject to the terms hereof, each Party (a "**Granting Party**") grants to the other Party (a "**Licensing Party**"):
 - (i) a non-exclusive, worldwide, fully paid-up licence to Use any of the O&M Owned IP owned by the Granting Party and any of the Granting Party's Background IP in connection with all activity, licences and sublicences only as reasonably necessary or desirable for the purposes of the Transmission Assets, and for the use, operation, maintenance, repair, rehabilitation, replacement and expansion of each Transmission Asset during, and for its decommissioning and removal at the end of, its Service Life, and for ancillary purposes, including the operation, maintenance, repair, rehabilitation, replacement and expansion of electricity transmission facilities interconnected with the Transmission Assets;
 - (ii) a non-exclusive, worldwide, fully paid-up licence to Use any of the O&M Owned IP and any of the Granting Party's Background IP necessary for the Licensing Party to exercise this licence to the O&M Owned IP for the Licensing Party's and its Affiliates' own business purposes, without any right to sublicense; and
 - (iii) a non-exclusive right to grant to third parties such non-exclusive, commercial sublicences to the O&M Owned IP and any of the Granting Party's Background IP necessary for the exercise of the sublicensed right to the O&M Owned IP as the Parties may agree in accordance with **Section 15.5(c)**.
- (g) Licence Restrictions - The Licensing Party may not Use the trade-marks in the Background IP of the Granting Party, without the Granting Party's prior written consent, evidencing care and control of the marks, on such commercially reasonable terms as the Granting Party may agree. The assignments in **Section 15.3(c)** and

Section 15.3(d) shall be subject to the licences in **Section 15.3(f)**. Subject to **Section 15.5(c)**, the licences in **Section 15.3(f)** shall be royalty free and shall remain in full force and effect for the duration of the Intellectual Property Rights, provided that such licences shall not include Intellectual Property Rights arising after the earlier of:

- (i) termination of this Agreement; and
 - (ii) the date of Nalcor's acquisition of ownership of the Maritime Link pursuant to this Agreement or any other Formal Agreement.
- (h) Protection of O&M Owned IP Relating to Transmission Assets - Nalcor shall, at its own cost and expense, take all commercially reasonable steps to preserve and protect the value of the O&M Owned IP arising out of the O&M Activities on the NL Transmission Assets, using counsel of Nalcor's choice, and shall notify Emera in advance of all proposed steps in any process to secure registered Intellectual Property Rights in such O&M Owned IP. Nalcor may not file for patent protection or otherwise disclose such O&M Owned IP without the consent of Emera, where such filing or other disclosure would impact the Intellectual Property Rights of Emera. If Nalcor decides not to pursue patent protection for some O&M Owned IP arising out of the O&M Activities on the NL Transmission Assets, Emera shall have the right, at its cost and expense, to seek patent protection for such O&M Owned IP in Nalcor's name using counsel of Emera's choice.
- (i) Protection of O&M Owned IP Relating to Maritime Link - Emera shall, at its own cost and expense, take all commercially reasonable steps to preserve and protect the value of the O&M Owned IP arising out of the O&M Activities on the Maritime Link, using counsel of Emera's choice, and shall notify Nalcor in advance of all proposed steps in any process to secure registered Intellectual Property Rights in such O&M Owned IP. Emera may not file for patent protection or otherwise disclose such O&M Owned IP without the consent of Nalcor, where such filing or other disclosure would impact the Intellectual Property Rights of Nalcor. If Emera decides not to pursue patent protection for some O&M Owned IP arising out of the O&M Activities on the Maritime Link, Nalcor shall have the right, at its cost and expense, to seek patent protection for such O&M Owned IP in Emera's name using counsel of Nalcor's choice.
- (j) Pursuit of Application - Once a Party has filed for patent protection, it must diligently pursue all applications, and may not allow them to go abandoned or expire during their term without notifying the other Party and permitting the other Party to assume prosecution of such registered patents or patent applications; provided that the filing Party shall have the right to prosecute, amend and withdraw claims in any patent application without notifying the other Party unless such step would amount to the withdrawal or cancellation of all claims in respect of a particular invention.
- (k) Notice of Infringement - Each Party shall Notify the other Party if it becomes aware of any infringement or possible infringement of any of the O&M Owned IP by a third party. Neither Party is under any obligation to enforce any of the O&M Owned IP

against third parties. Each Party shall have the right to bring a Claim for infringement of any of the O&M Owned IP by a third party in the name of the Party which owns the O&M Owned IP, if the owner does not do so within a reasonable period of time following receipt of Notice thereof. The Party choosing to bring a Claim shall bear its own costs and expenses in the proceeding, unless otherwise agreed. The Party not bringing a Claim referred to in this Section shall have the right to participate therein at its own cost and expense. In the event of a successful Claim, each of Nalcor and Emera shall be entitled to its IP Commercialization Share of any award or settlement after deduction of legal fees and disbursements associated with the Claim. Neither Party may settle any Claim brought by it related to the O&M Owned IP without the consent of the other Party.

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

15.4 Intellectual Property Rights Licensed for the O&M Activities

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

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

15.5 Further Representations, Warranties and Covenants Regarding IP

- (a) Nalcor Representations and Warranties - Nalcor represents and warrants that:
 - (i) except to the extent of any Third Party Licensed IP or Emera IP incorporated therein, the Nalcor Foreground IP shall at all times prior to the assignment contemplated by **Section 15.3(d)** be owned by Nalcor, and shall be available for transfer to Emera as contemplated by **Section 15.3(d)**; and

- (ii) Nalcor has the rights to grant the assignments and licences contemplated by this **Article 15**.
- (b) Emera Representations and Warranties - Emera represents and warrants that:
- (i) except to the extent of any Third Party Licensed IP or Nalcor IP incorporated therein, the Emera Foreground IP shall at all times prior to the assignment contemplated by **Section 15.3(c)** be owned by Emera, and shall be available for transfer to Nalcor as contemplated by **Section 15.3(c)**, and except to the extent of any Third Party Licensed IP or any breach of **Section 15.5(a)(i)**, all Nalcor Foreground IP assigned to Emera in **Section 15.3(d)** shall, at all times after the transfer in **Section 15.3(d)** and prior to Nalcor's acquisition of the Maritime Link pursuant to this Agreement or any other Formal Agreement, be owned by Emera, and shall be available for transfer back to Nalcor as contemplated by **Section 15.3(l)**; and
 - (ii) Emera has the rights to grant the assignments and licences contemplated by this **Article 15**.
- (c) Commercialization and Reporting of Licensing Revenue - This **Section 15.5(c)** shall apply to all licences granted by owners to third parties of the O&M Owned IP held in trust pursuant to **Section 15.3(e)**, and to all sublicences granted by a Licensing Party to third parties pursuant to **Section 15.3(f)(iii)** (the "**Commercialization**") which may be made by Emera or its Affiliates, or Nalcor or its Affiliates (such licensor in each particular case, a "**Commercializing Party**"). The Party that is not the Commercializing Party or the applicable Affiliate of the Commercializing Party, in the particular case, is referred to herein as the "**Non-Commercializing Party**". In respect of:
- (i) Commercialization sought by a Commercializing Party, the Commercializing Party shall obtain the consent of the Non-Commercializing Party prior to Commercialization, which consent may not be unreasonably withheld in respect of O&M Owned IP, and which consent may be arbitrarily withheld in respect of the Non-Commercializing Party's Background IP;
 - (ii) licences purported to be granted by a Commercializing Party without the requisite consent in **Section 15.5(c)(i)**, such licences shall be void and of no force or effect;
 - (iii) all Commercialization, the Commercializing Party shall, within 30 days of the end of the month in which a payment is received, (A) provide a detailed reporting of all payments received from time to time to the Non-Commercializing Party, and (B) pay to the Non-Commercializing Party the IP Commercialization Share to which it is entitled;
 - (iv) O&M Owned IP and any Background IP which has achieved Commercialization prior to the date of Nalcor's acquisition of ownership of

the Maritime Link pursuant to this Agreement or any other Formal Agreement, the rights and obligations in **Sections 15.3(e), 15.3(g), 15.3(i), 15.3(j)** and **15.3(k)** and this **Section 15.5(c)**, and the right to grant sublicences in **Section 15.3(f)(iii)**, shall survive this Agreement and shall continue until they terminate on the IP Commercialization End Date; and

- (v) O&M Owned IP or Background IP which has not achieved Commercialization prior to the date of Nalcor's acquisition of ownership of the Maritime Link pursuant to this Agreement or any other Formal Agreement, the rights and obligations in **Sections 15.3(e), 15.3(g), 15.3(i), 15.3(j)** and **15.3(k)** and this **Section 15.5(c)**, and the right to grant sublicences in **Section 15.3(f)(iii)**, shall terminate upon such date.

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

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

ARTICLE 16
ASSIGNMENT AND CHANGE OF CONTROL

16.1 **Nalcor Assignment Rights**

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Nalcor Rights**"), without the prior written consent of Emera, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera substantially in the form attached hereto as **Schedule 3**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor will be deemed to be an assignment of Nalcor Rights requiring the prior written consent of Emera pursuant to **Section 16.1(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 16.1** will be null and void.

16.2 **Emera Assignment Rights**

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

assignment of Emera Rights requiring the prior written consent of Nalcor pursuant to **Section 16.2(a)**, which consent may be arbitrarily withheld.

- (d) Non-Permitted Assignment - Any assignment in contravention of this **Section 16.2** will be null and void.

16.3 **No Sale of Maritime Link**

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

16.4 **Nalcor Option**

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

ARTICLE 17
DISPUTE RESOLUTION

17.1 **General**

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

17.2 **Procedure for Inter-Party Claims**

- (a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the "**Claiming Party**") intending to assert a

Claim against the other Party (the "**Recipient Party**") shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party's failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.

- (b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

**ARTICLE 18
MISCELLANEOUS PROVISIONS**

18.1 Notices

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

To Nalcor:

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

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

with a copy to:

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

To Emera:

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

with a copy to:

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

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

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 O&M Activities shall be construed or considered as creating any such partnership, joint venture, association, trust or fiduciary relationship, or as constituting either Party as the agent or legal representative of the other Party for any purpose nor to permit either Party to enter into agreements or incur any obligations for or on behalf of the other Party.

18.7 **Further Assurances**

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

18.8 **Severability**

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

jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

18.9 **Time of the Essence**

Time shall be of the essence.

18.10 **Amendments**

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

18.11 **No Waiver**

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

18.12 **No Third Party Beneficiaries**

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

18.13 **Survival**

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

18.14 **Waiver of Sovereign Immunity**

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

that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

18.15 **Successors and Assigns**

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

18.16 **Capacity of Nalcor**

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

[Remainder of this page intentionally left blank.]

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

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

NALCOR ENERGY

By: [Signature]
Name: Ed Martin
Title: President and Chief Executive Officer

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

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

[Signature]

Name: Rob Hull

We have authority to bind the corporation.

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

EMERA INC.

By: [Signature]
Name: Chris Huskisson
Title: President and Chief Executive Officer

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

[Signature]

Name: Peter Doig

We have authority to bind the company.

JOINT OPERATIONS AGREEMENT

SCHEDULE 1

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

SECTION 1 – INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Section References

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

1.3 Appendix

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

Appendix A - *Commercial Arbitration Code (Canada)*

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 Purpose and Sequence of Dispute Resolution

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

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

2.2 Confidentiality

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

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

2.3 Interim Measures

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

2.4 Parties to Proceedings

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

2.5 Mediator or Arbitrator as Witness

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

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

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

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

3.2 Reservation of Rights

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

3.3 Failure of Negotiations

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

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

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

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

4.2 Appointment of Mediator

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

4.3 Mediation Process

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

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

4.4 Reservation of Rights

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

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

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

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

5.2 Provisions Relating to the Arbitration Act and the Code

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

5.3 Appointment of Tribunal

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

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

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

5.4 Arbitration by Single Arbitrator

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

5.5 Procedure

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

5.6 Awards

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

5.7 Settlement

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

SECTION 6 – EXPERT DETERMINATION PROCEDURE

6.1 Referral for Expert Determination

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

6.2 Qualifications of Independent Expert

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

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

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

6.3 Selection of the Independent Expert

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

6.4 **Terms of Reference**

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

6.5 **Information Provided to Independent Expert**

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

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

6.6 **Dispute Context**

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

6.7 **No ex parte Communication**

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

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

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

6.8 Initial Meeting and Joint Presentations by the Parties

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

6.9 Written Submissions and Responses

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

6.10 Independent Expert Clarifications

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

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

6.11 **Method of Evaluation**

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

6.12 **Decision and Presentation of Report**

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

6.13 **Costs of Expert Determination**

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

6.14 **Effect of Determination**

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

6.15 **Settlement**

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

**Appendix A
to Dispute Resolution Procedure**

COMMERCIAL ARBITRATION CODE

Appendix A COMMERCIAL ARBITRATION CODE

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

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

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

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

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

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

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

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

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this Code:

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

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

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

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

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

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

**ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS**

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

**ARTICLE 4
WAIVER OF RIGHT TO OBJECT**

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

**ARTICLE 5
EXTENT OF COURT INTERVENTION**

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

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

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

CHAPTER II. ARBITRATION AGREEMENT

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

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

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

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

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

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

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

**ARTICLE 10
NUMBER OF ARBITRATORS**

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

**ARTICLE 11
APPOINTMENT OF ARBITRATORS**

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

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

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

ARTICLE 12 GROUNDS FOR CHALLENGE

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

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

ARTICLE 13 CHALLENGE PROCEDURE

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

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

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

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

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

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

**ARTICLE 15
APPOINTMENT OF SUBSTITUTE ARBITRATOR**

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

**ARTICLE 16
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION**

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

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

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

**ARTICLE 17
POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES**

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

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

**ARTICLE 18
EQUAL TREATMENT OF PARTIES**

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

**ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE**

- (1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.
- (2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

**ARTICLE 20
PLACE OF ARBITRATION**

- (1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

**ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS**

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

**ARTICLE 22
LANGUAGE**

- (1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.
- (2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

**ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE**

- (1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.
- (2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

**ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS**

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

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

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

**ARTICLE 25
DEFAULT OF A PARTY**

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

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

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

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

**ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL**

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

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

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

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

**ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE**

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

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

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

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

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

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

ARTICLE 29

DECISION-MAKING BY PANEL OF ARBITRATORS

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

ARTICLE 30

SETTLEMENT

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

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

ARTICLE 31

FORM AND CONTENTS OF AWARD

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

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

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

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

**ARTICLE 32
TERMINATION OF PROCEEDINGS**

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

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

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

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

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

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

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

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

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

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

**ARTICLE 36
GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT**

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

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

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

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

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

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

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

(b) if the court finds that:

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

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

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

JOINT OPERATIONS AGREEMENT

SCHEDULE 2

FORMAL AGREEMENTS

FORMAL AGREEMENTS

1. Maritime Link - Joint Development Agreement
2. Energy and Capacity Agreement
3. Maritime Link (Nalcor) Transmission Service Agreement
4. Maritime Link (Emera) Transmission Service Agreement
5. Nova Scotia Transmission Utilization Agreement
6. New Brunswick Transmission Utilization Agreement
7. MEPCO Transmission Rights Agreement
8. Interconnection Operators Agreement
9. Joint Operations Agreement
10. Newfoundland and Labrador Development Agreement
11. Labrador-Island Link Limited Partnership Agreement
12. Inter-Provincial Agreement
13. Supplemental Agreement

JOINT OPERATIONS AGREEMENT

SCHEDULE 3

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF [NAME OF] AGREEMENT

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

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

AMONG:

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

- or -

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

- and -

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

- and -

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

- or -

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

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

WHEREAS:

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

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

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

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the

construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**” or “**Section**” followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.

- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

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

ARTICLE 2 ASSIGNMENT

2.1 Assignment to Affiliate

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

2.2 Assumption of Liabilities

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

2.3 Limitations on Assignment / Assumption

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

(a)

(b)

2.4 Confirmation of Status of Assigned Agreement

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

2.5 Assignor to Remain Liable

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

2.6 [Nalcor/Emera] Defaults

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

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

2.7 Acknowledgement of Consenting Party

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

2.8 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:
 - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and
 - (ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.10**.

2.9 Determination of Value for Tax Compliance Purposes

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

2.10 Invoicing

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

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

2.11 Payment and Offset

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

2.12 HST Registration Status

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

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

2.13 [●]

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

**ARTICLE 3
REPRESENTATIONS AND WARRANTIES**

3.1 **Assignor and Assignee Representations and Warranties**

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

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

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

**ARTICLE 4
DISPUTE RESOLUTION PROCEDURE**

4.1 General

- (i) 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**”).
- (j) 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]