

NALCOR ENERGY

and

EMERA INC.

and

NOVA SCOTIA POWER INCORPORATED

ENERGY ACCESS AGREEMENT

October 20, 2013

THIS AGREEMENT is dated the 20th day of October, 2013

B E T W E E N:

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

- and -

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

- and -

NOVA SCOTIA POWER INCORPORATED, a company incorporated under the laws of the Province of Nova Scotia ("**NSPI**")

(individually referred to as a "**Party**" and collectively referred to as the "**Parties**")

WHEREAS:

- A. NSPML filed an application with the UARB on January 28, 2013, under the *Maritime Link Act*, S.N.S. 2012, c. 9 and the *Maritime Link Cost Recovery Process Regulations* (N.S. Reg. 189/2012);
- B. the UARB's decision dated July 22, 2013 directed as a condition to its approval of the Maritime Link that NSPML obtain from Nalcor the right to access Nalcor market-priced Energy when needed to economically serve NSPI and its ratepayers, or provide some other arrangement to ensure access to market-priced Energy;
- C. Nalcor has Energy surplus to its needs to meet NL Native Load and in accordance with the Newfoundland and Labrador Energy Plan will maximize the value of such Energy sales for the benefit of the Province of Newfoundland and Labrador; and
- D. the Parties wish to confirm the terms and conditions under which they will enter into a definitive Energy Access Agreement.

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

1. Interpretation

- (a) Definitions – For the purposes of this Agreement, capitalized terms used but not

otherwise defined herein shall have the respective meanings assigned to them in the ECA and the following terms shall have the meanings set forth below:

"Agreement" means this agreement, which sets out the commercial terms agreed between the Parties to address the UARB Requirement;

"Available Energy" means Nalcor-generated Energy (excluding New Generation Development Energy) that is excess to the requirements to meet NL Native Load and the Nova Scotia Block, up to a maximum of 1.8TWh per Contract Year;

"Balancing Service Agreement" means the agreement contemplated by **Section 7(g)**;

"CPI" means the consumer price index for "All Items" published or established by Statistics Canada (or its successor) for any relevant calendar year in relation to the Province of Newfoundland and Labrador;

"Commitment" has the meaning set forth in **Section 6(a)**;

"Contract Year" means, during the Term, periods from September 1 to August 31;

"ECA" means the Energy and Capacity Agreement dated July 31, 2012 between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block, as it may be modified, amended, supplemented or restated;

"EEI" has the meaning set forth in **Section 5(f)**;

"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 9**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

"Emera Rights" has the meaning set forth in **Section 9(a)**;

"Emera Variance Amount" has the meaning set forth in **Section 7(e)**;

"Final Agreement" means the definitive Energy Access Agreement referred to in **Section 2(a)**;

"Forgivable Event" has the meaning set forth in **Section 4(e)**;

"Full Power" means First Commercial Power as defined in the ECA modified to refer to "four" (instead of three) generating units in the definition of MFP Commissioning Date;

"NL Native Load" means the cumulative electricity consumption within NL by customers of NLH, Nalcor, and the Affiliates of NLH and Nalcor, and their successors or assigns, plus associated transmission and distribution losses;

“NSPI Solicitation” has the meaning set forth in **Section 5(a)**;

“NSPML” means NSP Maritime Link Incorporated, a corporation incorporated under the laws of NL and includes its successors;

“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 8**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

“Nalcor Balancing Service” has the meaning set forth in **Section 7(g)**;

“Nalcor Bid Energy” has the meaning set forth in **Section 4(b)**;

“Nalcor-generated Energy” means Energy from any interconnected generation facilities located within NL, that are now or hereafter:

- (i) directly or indirectly owned by or contracted to Nalcor or any Affiliate of Nalcor or its successors or assigns, or
- (ii) directly or indirectly operated or controlled by Nalcor or any Affiliate of Nalcor or its successors or assigns for the purpose of generating Energy to satisfy NL Native Load.

For greater certainty, Nalcor-generated Energy excludes Energy from the Upper Churchill hydro-electric project required to be delivered to Hydro Quebec under existing contract;

“Nalcor Forecast” has the meaning set forth in **Section 4(a)**;

“Nalcor Rights” has the meaning set forth in **Section 8(a)**;

“Nalcor Supplied Energy” means Energy sold and delivered by Nalcor to NSPI pursuant to the provisions of this Agreement or the Final Agreement. For greater certainty, Nalcor Supplied Energy is in addition to, and separate from, the Nova Scotia Block;

“Nalcor Variance Amount” has the meaning set forth in **Section 7(e)**;

“New Generation Development Energy” means any Nalcor-generated Energy which is generated from a generating facility (other than the Muskrat Falls Plant) built or acquired after the date hereof wholly or partially for the purposes of, and which is committed under, a contract for the supply of Energy by Nalcor to a customer outside of NL. For greater certainty, Energy from such a generating facility which is not committed to such contract shall not be considered New Generation Development Energy and shall be included in Available Energy;

“PPA” has the meaning set forth in **Section 7(f)(ii)(A)**;

“Party” and “Parties” have the meanings set forth in the preamble of this Agreement;

“Peak Hours” means the hours of a day that are deemed to be peak hours by the ISO-NE operations manuals, as amended from time to time;

“Off-Peak Hours” means the hours of a day that are not Peak Hours;

“Redeliverable Energy” means the Energy for which Nalcor has rescheduled delivery pursuant to **Section 4(d)**;

“Settled Forecast” has the meaning set forth in **Section 7(a)**;

“Sunk Transmission” means Nalcor’s long-term transmission reservations, or Emera’s as the case may be, in effect prior to the applicable NSPI Solicitation;

“Term” has the meaning set forth in **Section 3(d)**;

“UARB Requirement” has the meaning set forth in **Section 3(b)**;

“Variance” has the meaning set forth in **Section 7(b)**; and

“Variance Trigger Date” has the meaning set forth in **Section 7(b)**.

- (b) Including – For the purposes of this Agreement, “including” shall mean “including without limitation”.

2. Energy Access Agreement

- (a) Definitive Agreement – The Parties agree to negotiate in good faith to conclude a definitive Energy Access Agreement (the “**Final Agreement**”), incorporating the commercial terms contained in this Agreement and customary and appropriate terms for transactions of the nature contemplated by this Agreement, including as required tax, audit rights, force majeure and metering provisions, and the standard agreement template language previously developed by the Parties (other than the Invoicing and Payment provisions), as applicable. The Final Agreement shall include, as a schedule, the form of the Balancing Service Agreement. If the Parties are unable to conclude the Final Agreement by October 1, 2014, the Parties shall agree on as many provisions of the Final Agreement as possible and any Party may refer the remaining provisions to an Independent Expert as a Specified Dispute pursuant to Section 6.1 of the Dispute Resolution Procedure.
- (b) Relationship with Formal Agreements – For greater certainty, this Agreement and the Final Agreement do not modify any of the obligations of Emera, Nalcor or NSPI pursuant to the Formal Agreements, and there shall be no cross-defaults between the Final Agreement and the Formal Agreements.

3. General Terms and Conditions

- (a) Delivery Point – Nalcor shall deliver Nalcor Supplied Energy at the Delivery Point.
- (b) Effective Date – This Agreement shall become effective on the date of a decision by the UARB confirming that this Agreement satisfies the “Market-priced Energy” condition referenced in paragraph 459 of its decision dated July 22, 2013 (the “UARB Requirement”).
- (c) Scheduling – Nalcor Supplied Energy shall be scheduled on a day-ahead basis and the process for scheduling delivery shall be integrated with the scheduling protocol in the NS Transmission Utilization Agreement. Once Energy has been so scheduled for the following day, Nalcor will be obligated to deliver such Energy in that day, except for Forgivable Events other than for hydrology and NL Native Load.
- (d) Term – The term of this Agreement and the Final Agreement shall commence on Full Power and shall terminate on August 31, 2041 except to the extent extended pursuant to **Section 4(d)** (the “Term”). For greater certainty, the term of the Balancing Service Agreement shall be as set out in **Section 7(g)(i)**.
- (e) End-Use Consumption – Nalcor Supplied Energy will be for end-use consumption in Nova Scotia only, except that NSPI shall have the right to resell Nalcor Supplied Energy in the event that such Energy is surplus to NSPI’s requirements due to variations in NSPI’s load or generation identified subsequent to NSPI’s acceptance of a Nalcor bid.
- (f) Energy-Only Product – Nalcor Supplied Energy shall be provided to NSPI as an energy-only product. For greater certainty, Nalcor retains all rights and value associated with such Energy in respect of Capacity and GHG Credits.
- (g) Payment Terms – Nalcor shall bill NSPI for Nalcor Supplied Energy on a monthly basis, in arrears, and NSPI shall pay Nalcor for Nalcor Supplied Energy within 20 days of receipt of an invoice.
- (h) Credit Assurances – Transactions hereunder shall be subject to Nalcor and NSPI’s respective general credit policies in effect at the time of contracting.
- (i) Audit Rights – The Parties agree that the audit provisions to be included in the Final Agreement shall be based on the principles of reciprocity, confidentiality of commercially sensitive information, and disclosure of information required by each Party to determine compliance with the Final Agreement.

4. Nalcor Forecast and Bidding

- (a) Nalcor Forecast – On a monthly basis during the Term, Nalcor will provide a good faith forecast to NSPI of Available Energy forecasted to be available for sale to NSPI for the following 24 months, up to a maximum of 1.8TWh per Contract Year (each

such forecast is a “**Nalcor Forecast**”). The Nalcor Forecast shall include a forecast of the total Available Energy denominated by Peak Hours and Off-Peak Hours for each month, all being capable of delivery at the Delivery Point.

- (b) Nalcor Bid – For each Contract Year of the Term, Nalcor shall, subject to **Section 4(e)** and **Section 5(b)**, bid into the NSPI Solicitation for such Contract Year the amount of Energy in the Nalcor Forecast for that Contract Year to the extent called for in the NSPI Solicitation. The aggregate amount of Energy bid into the NSPI Solicitation for any Contract Year up to the applicable amount of Nalcor Forecast Energy is referred to as the “**Nalcor Bid Energy**” for that Contract Year. Following acceptance of a Nalcor bid by NSPI, Nalcor shall be obligated to sell and deliver to NSPI the Nalcor Bid Energy subject to the provisions of **Sections 4(d)** and **(e)**.
- (c) Nalcor Bid Price – Nalcor will make good faith bids of Nalcor Bid Energy into the NSPI Solicitations. In pricing such bids, Nalcor will consider NSPI’s market alternatives and Nalcor’s opportunities in other accessible northeast electricity markets available to Nalcor at any time. The sale price of the Nalcor Bid Energy at the Delivery Point shall not exceed the greater of:
- (i) the hourly Day-Ahead Price (as defined in the ISO-NE Tariff) at the ISO-NE Mass Hub node (described as “4000_:_H.INTERNAL_HUB” by the ISO-NE), priced at the hour of delivery. For greater certainty, this price shall be the Day-Ahead Price, and shall not be reduced by any real or implied market fees, transmission tariffs, transmission losses or other charges; and
 - (ii) any alternative spot-market opportunities identifiable by Nalcor at the time of its bid which are available to Nalcor at any time within one year following the Nalcor bid into the NSPI Solicitation, to the extent Nalcor can demonstrate both a liquid trading node with associated published forward pricing and an actual transmission path, less incremental transmission tariffs, transmission losses and other charges applicable to deliver Nalcor Bid Energy to such market, but for greater certainty, not to reflect a deduction for any costs for Sunk Transmission.

Pricing up to the greater of (i) and (ii) above shall be deemed to be a good faith bid with respect to price.

- (d) Nalcor Redelivery – Following acceptance by NSPI of a Nalcor bid and prior to the scheduling of such Energy, the timing of delivery of any Nalcor Supplied Energy may at Nalcor’s option be interrupted and redelivered provided Nalcor shall redeliver such Energy as soon as commercially possible thereafter at a time and in quantities so that the Energy has equivalent economic value to NSPI and, in any event, Energy not so delivered on the date on which it was first to have been delivered shall be redelivered by not later than 365 days following such date at a time and in quantities so that the Energy has equivalent economic value to NSPI, and the NSPI Solicitation contract term will be extended accordingly, if necessary. Nalcor’s

obligation to schedule and deliver the daily quantities of Redeliverable Energy is subject to Forgivable Events, provided however that Nalcor shall deliver the total Redeliverable Energy in accordance with the foregoing provisions of this **Section 4(d)**. Redeliverable Energy may not be further interrupted by Nalcor pursuant to the foregoing provisions of this **Section 4(d)**.

- (e) Forgivable Events – Nalcor’s requirements to bid the Nalcor Forecast or schedule delivery of the Nalcor Bid Energy as provided in **Section 4(b)** will be reduced to the extent Nalcor is unable to bid the Nalcor Forecast or schedule delivery of the Nalcor Bid Energy due to any one of the following: (i) Nalcor requires such Energy to meet NL Native Load; (ii) hydrology events in NL; (iii) a force majeure event; (iv) a safety event; (v) a forced outage; or (vi) an action required to be taken by any Party to comply with Good Utility Practice (each of which is a “**Forgivable Event**”).

5. NSPI Solicitations

- (a) Not later than 30 days after receipt of the May 31 Nalcor Forecast, NSPI may issue a competitive market solicitation for supply of Energy for the coming Contract Year (an “**NSPI Solicitation**”). If NSPI issues such a solicitation, Nalcor shall be provided 30 days to respond.
- (b) Nalcor will bid into each NSPI Solicitation in accordance with **Section 4(b)**, to the extent that NSPI requests supply of Energy in the quantities and during the Peak Hours and Off-Peak Hours indicated in the applicable Nalcor Forecast.
- (c) NSPI shall respond to the Nalcor bid not later than 15 days after close of the applicable NSPI Solicitation. Nothing in this Agreement obligates NSPI to issue a NSPI Solicitation or to accept a bid tendered by Nalcor to a NSPI Solicitation. For greater certainty, NSPI may issue solicitations and enter into contracts with third parties instead of, or in addition to, issuing the NSPI Solicitation.
- (d) NSPI is not restrained from requesting Energy from any source or with any characteristics, and Nalcor is only required to respond to a NSPI Solicitation which is compliant with this Agreement and the Final Agreement.
- (e) Nothing in this Agreement or the Final Agreement prohibits Nalcor from selling any Available Energy for a Contract Year not requested by NSPI in a NSPI Solicitation for such Contract Year or if requested, not accepted by NSPI.
- (f) Nalcor and NSPI shall enter into an Edison Electrical Institute standard form Master Purchase and Sale Agreement, subject to mutually agreed changes (the “**EEI**”). Upon award of a bid, Nalcor and NSPI will enter into a confirmation pursuant to the EEI.

6. Emera and Nalcor Commitment

- (a) Commitment – Subject to **Section 7(e)(i)** and to force majeure events, Nalcor shall make available to NSPI an average of at least 1.2 TWh of Energy per Contract Year

over the Term capable of delivery at the Delivery Point (the “**Commitment**”). The amount of Energy made available by Nalcor to NSPI in each Contract Year used to determine fulfillment of the Commitment shall be calculated as the sum of:

- (i) Nalcor Supplied Energy in such year;
- (ii) Any Energy supplied to NSPI by Nalcor during such year which is not a Nalcor Variance Amount, Nalcor Supplied Energy or Energy comprising the Nova Scotia Block;
- (iii) Nalcor Bid Energy to the extent not accepted by, or supplied to, NSPI in such year; and
- (iv) Nalcor Forecast Energy in such year which exceeds the NSPI Solicitation for such year and is not supplied to NSPI.

7.

Identification and Resolution of Commitment Contingencies

- (a) Nalcor Progress Report – On an annual basis during each Contract Year, Nalcor will provide to NSPI and Emera a progress report on Nalcor’s ability to deliver the Commitment, which reports shall include an outlook on the following two years. Each such progress report shall incorporate Nalcor’s hydrology record up to the previous year. Emera and NSPI shall each have the right to dispute Nalcor’s conclusion in any progress report, and if the Parties cannot agree on the resolution of any such dispute, any of them may refer the disputed matter to an Independent Expert as a Specified Dispute pursuant to Section 6.1 of the Dispute Resolution Procedure. Such agreed upon or Independent Expert determined forecast is referred to as a “**Settled Forecast**”.
- (b) Resolution Process – If any Settled Forecast indicates that the actual average annual amount of the Energy to be made available to NSPI over the Term is forecasted to be less than the Commitment (such amount, as adjusted annually based on the applicable Settled Forecast, being a “**Variance**”), then, in respect of the Variance, Nalcor and Emera shall proceed in accordance with **Sections 7(c) to 7(i)**. The date on which such forecast of a Variance is made or finally determined under this **Section 7(b)** is referred to as the “**Variance Trigger Date**”.
- (c) Negotiated Solution – Within 20 days following a determination of a Variance, Nalcor and Emera shall each appoint a senior executive, who shall together work cooperatively and in good faith over a period of 3 months to determine a mutually-agreeable means of satisfying the Variance. If Nalcor and Emera cannot agree upon a commercially reasonable resolution that is acceptable to each of them in their sole discretion and that preserves NSPI’s rights under this Agreement, then the Parties shall proceed pursuant to **Sections 7(d) to 7(i)**, as applicable.

- (d) Nalcor Obligation – Notwithstanding anything in this Agreement, Nalcor shall remain obligated to comply with the terms of this Agreement including providing the Nalcor Forecast and bidding into NSPI Solicitations so that the amounts determined in **Section 6(a)(i), (ii), (iii), and (iv)**, the Emera Variance Amount and the Nalcor Variance Amount described in **Section 7(e)** shall result in an amount of Energy being available on average of not less than 1.2 TWh per Contract Year over the Term, subject to force majeure events.
- (e) Emera and Nalcor Variance Amounts – Subject to force majeure events, Emera and Nalcor shall be responsible for any Variance as follows:
- (i) Emera shall be responsible for any Variance up to a maximum of 300 GWh per Contract Year for each Contract Year following the Variance Trigger Date (the "**Emera Variance Amount**").
 - (ii) Nalcor shall be responsible for any Variance in excess of the Emera Variance Amount (the "**Nalcor Variance Amount**").
 - (iii) Delivery Point –
 - (A) In the case of the Emera Variance Amount, the delivery point for such Energy shall be, at the option of Emera, the Delivery Point or any point in Nova Scotia.
 - (B) In the case of the Nalcor Variance Amount, the delivery point for such Energy shall be the Delivery Point.
 - (iv) Variance Forecasts – On a monthly basis during the Term and in addition to the Nalcor Forecasts, Nalcor and Emera will each provide good faith forecasts to NSPI of Energy in amounts sufficient to satisfy their respective obligations under **Section 7(e)(i)** and **(ii)** and as available from generation and market sources, for sale to NSPI for the following 24 months (the "**Variance Forecasts**"). The Variance Forecasts shall include a forecast of the total of such available Energy denominated by Peak Hours and Off-Peak Hours for each month, all being capable of delivery at the applicable delivery point.
 - (v) Bids - Nalcor and Emera shall each bid into the NSPI Solicitation for each Contract Year their respective Variance Forecasts for that Contract Year. Acceptance of either such bid by NSPI shall obligate the applicable Party to sell and deliver to NSPI the bid Energy subject to the provisions of **Sections 4(d)** and **(e)**, *mutatis mutandis*.
 - (vi) Bid Prices - Pricing of such bids by Nalcor and Emera will be subject to the pricing cap set out in **Section 4(c)**, *mutatis mutandis*, provided that in the case of bids in respect of the Emera Variance Amount, the alternate market price under **Section 4(c)(ii)** shall be any alternative spot-market

opportunities available to Emera at any time within one year following the Emera bid into the NSPI Solicitation, to the extent Emera can demonstrate both a liquid trading node with associated published forward pricing and an actual transmission path from the source of its Energy, less incremental transmission tariffs, transmission losses and other charges applicable to deliver the bid Energy to such market, but for greater certainty, not to reflect a deduction for any costs for Sunk Transmission.

(vii) **Sections 3 and 5** shall apply to the Parties obligations under this **Section 7(e)**, *mutatis mutandis*.

(viii) If either Emera or Nalcor is unable or fails to meet their respective Variance Amount obligations, such Party shall compensate NSPI accordingly.

(f) Emera Wind with Nalcor Balancing Option –

(i) NSPI shall have the option, but shall not be obligated to, construct or contract wind generation to mitigate some or all of the Variance included in the Emera Variance Amount. NSPI may give notice of this decision within 90 days following the Variance Trigger Date. In the event NSPI exercises such option, Emera's obligation to provide the Emera Variance Amount shall be reduced by the projected aggregate Energy capacity of such wind generation over the remainder of the Term.

(ii) To the extent that NSPI declines to exercise its option under **Section 7(f)(i)**, Emera may, directly or through an Affiliate of Emera, exercise the same option to construct or contract wind generation to satisfy some or all of Emera's obligations in respect of the Emera Variance Amount, and in this event, the following provisions apply:

(A) If Emera and NSPI enter into a long term power purchase agreement in respect of such Energy on terms approved by the UARB (the "PPA"), the Emera Variance Amount shall be reduced by the amount of Energy contracted for in such PPA.

(B) If no PPA is entered into, Emera may in its sole discretion construct or contract wind generation for the purpose of supplying all or a portion of the Emera Variance Amount.

(g) Nalcor Balancing – In the event that Emera and/or NSPI exercises its/their option to construct or contract wind generation in accordance with **Section 7(f)(i)** or **(ii)**, the following shall apply:

(i) Nalcor will enter into a balancing services agreement (the "**Balancing Service Agreement**") to support the MW capacity of the wind generation facilities in NS or adjacent waters so constructed, up to 100 MW, by providing wind balancing services from generation sources located in NL for a period of 25

years from the in-service date of the wind generation facilities (the “**Nalcor Balancing Service**”). Emera will pay Nalcor an annual fee of \$87,600/MW (expressed in 2013 dollars and escalating at CPI) for the Nalcor Balancing Service;

- (ii) The principles set out in Appendix 1 shall apply to such balancing services and shall be incorporated in the Balancing Services Agreement; and
 - (iii) For greater certainty, Nalcor shall continue to be obligated to provide the Nalcor Variance Amount, if any.
- (h) Sources of Supply – For the purposes of satisfying any obligations arising pursuant to **Section 7(e)**, each Party may, in its sole discretion, select whatever sources of Energy supply it deems appropriate to satisfy its respective obligations, including market purchases or new generation development.
- (i) All references in this **Section 7** to wind generation include references to solar, tidal or other intermittent generation facilities in NS or adjacent waters with such changes as are required by the context.

8. Nalcor Assignment Rights

- (a) General – Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement (the “**Nalcor Rights**”) without the prior written consent of Emera and NSPI, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera and NSPI substantially in the form of Schedule 7 of the ECA, which is incorporated into this Agreement by reference.
- (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 8(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment – Any assignment in contravention of this **Section 8** will be null and void.

9. Emera Assignment Rights

- (a) General – Emera shall not be entitled to assign all or any portion of its interest in this Agreement (the “**Emera Rights**”) without the prior written consent of Nalcor and NSPI, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that Emera enters into an agreement with Nalcor and NSPI substantially in the form of Schedule 7 of the ECA, which is incorporated into this Agreement by reference.
- (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 9(a)**, which consent may be arbitrarily withheld.
- (d) Non-Permitted Assignment – Any assignment in contravention of this **Section 9** will be null and void.

10. NSPI Assignment Rights

NSPI shall not be entitled to assign all or any portion of its interest in this Agreement without the prior written consent of Nalcor and Emera, which consent may be arbitrarily withheld.

11. Governing Law

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. 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.

12. Confidentiality

- (a) 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 any 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. NSPI agrees and acknowledges that the Project NDA shall apply to it *mutatis mutandis* as if it was a signatory.

- (b) Disclosure of Agreement – Notwithstanding **Section 12(a)**, this Agreement may be disclosed publicly at any time by or on behalf of any Party.

13. Legally Binding Commitment

The Parties intend to be and are hereby legally bound by the terms and conditions of this Agreement. For greater certainty, the obligations under this Agreement are not contingent upon the execution of the Final Agreement.

14. Counterparts

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

15. 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 any other Party for any purpose nor to permit any Party to enter into agreements or incur any obligations for or on behalf of any other Party.

16. Severability

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

17. Time of the Essence

Time shall be of the essence.

18. Amendments

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

19. No Waiver

Any failure or delay of any Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms from time to time 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.

20. 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.

21. 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. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

22. Successors and Assigns

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

23. Capacity of Nalcor

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

[Remainder of this page intentionally left blank.]

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

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

Doreen Tucker
Name:

NALCOR ENERGY

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

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

We have authority to bind the corporation.

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

Nancy Turner
Name:


EMERA INC.

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

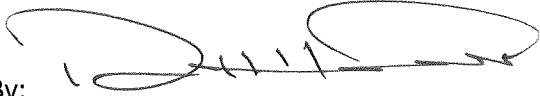
By: *[Signature]*
Name: Bruce Marchand
Title: Chief Legal Officer

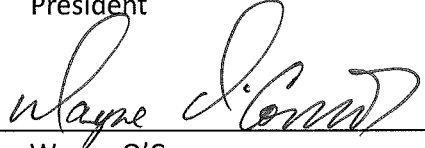
We have authority to bind the company.


Executed and delivered by Nova Scotia Power Incorporated, in the presence of:


Name: _____

NOVA SCOTIA POWER INCORPORATED

By: 
Name: Robert Hanf
Title: President

By: 
Name: Wayne O'Connor
Title: Executive Vice President, Operations

By: 
Name: Mark Sidebottom
Title: Vice President, Power Generation and Delivery

We have authority to bind the company.

APPENDIX 1**NALCOR BALANCING SERVICE**

The Nalcor Balancing Service shall consist of the exchange of Energy between Nalcor and Emera/NSPI to balance intermittent generation from the wind or other facilities providing Energy to NSPI as provided in Section 7(f) (as modified by Section 7(i)) of the Energy Access Agreement (the "Alternative Energy Facilities"), according to the following provisions:

1. Nalcor will provide balancing services at a maximum energy flow rate (as nominated by Emera/NSPI in accordance with the following sentence) of up to +/-100 MW, available at all times. By October 31 of each year, Emera/NSPI may nominate a maximum of up to 100 MW of balancing services, such nominated maximum energy flow rate to apply to the following calendar year. For greater certainty, the nomination of each 1 MW of balancing services would allow for a flow of up to 1 MW delivered to or received from Nalcor at the Delivery Point
2. Subject to Section 8(i) of this Appendix, in each calendar month that the Alternative Energy Facilities deliver Energy to Nalcor, Nalcor shall redeliver an equal amount of Energy to Emera/NSPI, such that the net Energy delivered in the calendar month shall be zero. Emera/NSPI shall not be entitled to receive Energy from Nalcor in an amount greater than the amount of Energy that the Alternative Energy Facilities have previously delivered to Nalcor.
3. Emera/NSPI may elect to deliver Energy from the Alternate Energy Facilities to Nalcor at any energy flow rate up to and including the then-applicable nominated maximum energy flow rate.
4. Emera/NSPI shall request, and Nalcor shall then schedule in accordance with such request, the redelivery of previously delivered Energy on a day-ahead basis and the process for scheduling redelivery shall be integrated with the scheduling protocol in the Nova Scotia Transmission Utilization Agreement. Nalcor shall be obligated to redeliver Energy at the energy flow rate specified by Emera/NSPI from time to time up to and including the then-applicable nominated energy flow rate and in accordance with the schedule provided by Emera/NSPI.
5. Energy provided by Nalcor and Emera/NSPI pursuant to the Nalcor Balancing Service shall be provided at the Delivery Point.
6. The control of the Nalcor Balancing Service shall be through automatic generation control (AGC) by Emera/NSPI and integrated into the Interconnection Operators Agreement. For greater certainty, the scheduling and forecasting provisions of the Energy Access Agreement shall not apply to the Nalcor Balancing Services.
7. The Nalcor Balancing Service will be provided at a maximum ramp rate of 10MW/min.
8. Nalcor Balancing Services shall be provided on a MWh-for-MWh basis, with no financial adjustment or other payment to either party, other than the fee provided for in Section 7(g)(i) of the Energy Access Agreement, provided that (i) to the extent the net Energy delivery is less than or equal to

2 GWhs in a calendar month, such imbalance shall be reconciled through deliveries of additional Energy by Emera/NSPI or Nalcor, as applicable, in accordance with the other provisions of the Balancing Service Agreement, (ii) to the extent the net Energy delivery is greater than 2 GWhs in a calendar month, it shall be reconciled through the adoption of a standard interchange inadvertent methodology providing for compensation to or from Nalcor for inadvertent overdeliveries or underdeliveries by Nalcor at its marginal cost or savings, as applicable, and (iii) each party shall have the remedies specified in the Balancing Service Agreement in the case of a breach of a party's obligations thereunder. In lieu of such monetary adjustment, however, (a) at Emera/NSPI's option, if Emera/NSPI has over-delivered Energy from the Alternative Energy Facilities in a monthly balancing period (i.e., the net Energy delivery from Emera/NSPI is positive), Emera/NSPI may reconcile such imbalance through deliveries of additional Energy from Nalcor in the following calendar month instead of a cash settlement, and (b) at Nalcor's option, if Nalcor has over-delivered Energy in a monthly balancing period (i.e., the net Energy delivery from Emera/NSPI is negative), Nalcor may reconcile such imbalance through deliveries of additional Energy from the Alternative Energy Facilities in the following calendar month instead of a cash settlement.

9. Nalcor's obligation to schedule the redelivery of Energy shall be excused solely by Forgivable Events other than that provided for in item (ii) in Section 4(e) of the Energy Access Agreement. Once Energy has been so scheduled for the following day, Nalcor will be obligated to redeliver such Energy in that day, except for Forgivable Events other than items (i) and (ii) in Section 4(e).

10. Energy provided by either party pursuant to the Nalcor Balancing Service shall not be considered Nalcor-Generated Energy, nor to satisfy any portion of the Commitment or the Nalcor Variance Amount, for purposes of the Energy Access Agreement or the Final Agreement.

11. The Nalcor Balancing Service will comply with Good Utility Practice and be subject to Applicable Law.