NALCOR ENERGY

and

EMERA INC.

AMENDED AND RESTATED
MARITIME LINK – JOINT DEVELOPMENT AGREEMENT

July 31, 2014

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Schedules:

AMENDED AND RESTATED
MARITIME LINK - JOINT DEVELOPMENT AGREEMENT

THIS AMENDED AND RESTATED MARITIME LINK - JOINT DEVELOPMENT AGREEMENT is made effective the 31st day of July, 2014 (the "**A&R 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;

B. on July 31, 2012 Nalcor and Emera entered into the original version of this Agreement (the "**Original ML-JDA**");

C. Nalcor and Emera entered into a Sanction Agreement effective December 17, 2012 (the "**Sanction Agreement**") providing for, among other things, (i) sanction of the Maritime Link, the Muskrat Falls Plant, the Labrador-Island Link and the Labrador Transmission Assets, (ii) certain obligations of the Parties in relation to the NS Regulatory Application, and (iii) certain related amendments to the Original ML-JDA;

D. by its decision dated July 22, 2013 in respect of the NS Regulatory Application (the "**ML Decision**") the UARB approved the ML Project, subject to the fulfillment of certain conditions as set forth in the ML Decision;

E. by a Maritime Link Compliance Filing filed on October 21, 2013 (the "**Compliance Filing**"), NSPML filed evidence to satisfy the UARB's condition on Market-priced Energy (as defined in the ML Decision) and otherwise accepted and agreed to all the other conditions in the ML Decision;

F. by its decision dated November 29, 2013 (the "**Supplemental Decision**") the UARB decided that it is satisfied that the conditions outlined in the ML Decision have been met and that the ML Project is approved in accordance with the ML Decision and the Supplemental Decision; and

G. Nalcor and Emera wish to amend and restate the Original ML-JDA to make certain amendments following from the Sanction Agreement and the UARB Decision;

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:

"**A&R Effective Date**" has the meaning set forth in the commencement of this Agreement;

"**AFE**" means a written authority for expenditure issued by the JDC-ML in the form prepared by the Project Manager, in consultation with the Project Director, and Approved by the JDC-ML, including a description of the type, purpose and location of the proposed Development Activities, together with all reasonable particulars and the Estimated Capital Costs of completing such Development Activities, and includes the Pre-CSED AFE, the Master AFE and any Supplemental AFEs;

"**AFUDC**" means allowance for funds used during construction of the Maritime Link, being a noncash item representing the estimated Financing Costs and Return on Equity relating to funds used to finance construction, which allowance is capitalized in the property accounts and included in revenue requirement, as that term is applied by the UARB;

"**Actual Capital Costs**" means the Capital Costs as incurred and as determined in accordance with the Cost Accounting Protocol, and as reduced by the value of any financial assistance in the form of a direct subsidy or other kind of cash contribution from the Government of Canada, but excluding any loans or loan guarantees;

"**Additional Capacity Costs**" has the meaning set forth in **Section 2.1(h)**;

"**Additional Transmission Rights Terms**" has the meaning set forth in **Section 2.1(h)**;

"**Adjustment Amount**" has the meaning set forth in **Section 2.5(a)**;

"**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 a Contractor, that Affiliate, except for the purposes of **Section 3.4(a)(i)(J)** and **Sections 16.2**, **16.3** and **16.4**, 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 a Contractor;

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

"**Annual Work Program and Budget**" has the meaning set forth in **Section 8.5(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;

"**Approved by the JDC-ML**" means approved by a decision of the JDC-ML made in accordance with **Article 3**, and "**Approves**", "**Approved**" and "**Approval**" in relation to the JDC-ML 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;

"**Basis of Design**" means a compilation of the fundamental engineering design criteria, data, principles and assumptions upon which the ML Project scope, Capital Costs estimate, risk analysis and schedule are based, as set forth in **Section 2.1(a)** and **Schedule 1**, as modified from time to time as provided in **Section 2.1(a)**;

"**Budget**" means a budget Approved by the JDC-ML identifying all expected Capital Costs relating to the conduct of Development Activities, as revised with the Approval of the JDC-ML from time to time;

"**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**" means the chief executive officer of Nalcor or Emera, as the case may be, notwithstanding any assignment by either Party to an Affiliate, or if there is no chief executive officer so designated at the relevant time, the senior officer of Nalcor or Emera, as the case may be, who at the relevant time has the responsibilities and authorities

customarily delegated by the board of directors to the chief executive officer of a corporation;

"**COD Notice**" has the meaning set forth in **Section 7.8(c)**;

"**Capacity**" means the capability to provide electrical power, measured and expressed in MW;

"**Capital Costs**" means:

(a) Previously Incurred Costs, excluding applicable interest; and

(b) all costs incurred for Development Activities after the TS Effective Date, determined and calculated in accordance with the Cost Accounting Protocol, but, for greater certainty, excluding, without duplication, AFUDC, Financing Costs and Return on Equity;

"**Claiming Party**" has the meaning set forth in **Section 18.2(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**" means the availability of the Maritime Link for delivery of the Nova Scotia Block, and for provision of transmission services pursuant to the Maritime Link Transmission Service Agreements;

"**Commercial Operation Date**" has the meaning set forth in **Section 7.8(c)**;

"**Commercialization**" has the meaning set forth in **Section 16.4(c)**;

"**Commercializing Party**" has the meaning set forth in **Section 16.4(c)**;

"**Commissioning**" means the start-up and testing activities required to demonstrate that the Maritime Link is ready for Commercial Operation;

"**Compliance Filing**" has the meaning set forth in the preamble to this Agreement;

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

"**Contractor**" means a Person who enters into a Project Contract with Emera or Nalcor;

"**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);

"**Cost Accounting Protocol**" means the methods, procedures and cost accounting principles to be used in determining Capital Costs for the purposes of this Agreement, as set forth in **Schedule 2**;

"**Cost Claim**" has the meaning set forth in **Section 8.11(b)**;

"Cost Sharing End Date" or **"CSED"** means the A&R Effective Date;

"**Decision Gate**" means a point in time, based upon a predefined set of deliverables, when the Gatekeeper has to make a decision whether to move to the next stage, make a temporary hold, or terminate the ML Project;

"**Decision Gate 3 Costs**" or "**DG3 Costs**" means the Estimated Capital Costs at the time of Emera Decision Gate 3, which the Parties have determined and agree are $1,577,000,000;

"**Decision Guidelines**" has the meaning set forth in **Section 3.2(b)**;

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

"**Delivery Point**" means the point of interconnection of the Maritime Link and the bulk energy transmission system in NS at the 345 kV side of the HVdc converter transformers at Woodbine, NS;

"**Design Capacity**" means the maximum amount of electrical power that the materials, equipment and structures comprising the Maritime Link will be designed to transfer bidirectionally in a safe and reliable manner, which amount shall be sufficient to permit the delivery at the Delivery Point of the quantity of electrical energy specified in the Basis of Design;

"**Development Activities**" means all activities and undertakings necessary to design, engineer, procure, construct, Commission and achieve Commercial Operation of the Maritime Link pursuant to this Agreement, including obtaining Regulatory Approvals, environmental and performance testing, and demobilization, and including all related project management services and activities, and includes the products of such activities and undertakings;

"**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, other than any circumstances where the CEOs of Nalcor and Emera are unable to reach a consensus decision and the final decision may be made by the CEO of Nalcor pursuant to **Section 3.2(b)**. For greater certainty, "**Dispute**" includes any dispute as to whether Nalcor is liable for all or any part of an Unapproved Overrun because a final decision made by the CEO of Nalcor pursuant to **Section 3.2(b)** did not conform to the guidelines set out in that section;

"**Dispute Resolution Procedure**" has the meaning set forth in **Section 18.1(a)**;

"**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 17.2(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 ML Project but which are not Emera Foreground IP;

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

"**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, or which have been assigned to Emera or its Affiliates by Contractors or Subcontractors, whether or not Used in the ML Project, that (i) are made with any equipment, supplies or facilities the cost of which are attributable to the ML Project, or (ii) arise, at the time of the conception, development or reduction to practice thereof, out of work the cost of which is attributable to the ML Project;

"**Emera Group**" has the meaning set forth in **Section 13.1**;

"**Emera IP**" means the Emera Background IP and the Emera Foreground IP;

"**Emera Project Contract**" means a Project Contract entered into by Emera;

"**Emera Rights**" has the meaning set forth in **Section 17.2(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**" or "**ECA**" means the agreement dated July 31, 2012 between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block;

"**Estimated Capital Costs**" means the estimated Capital Costs of the Maritime Link, as determined by Nalcor and Emera from time to time before the determination of the total Actual Capital Costs;

"**Estimated Overall Project Costs**" means the sum of the DG3 Costs, the LIL Estimated Capital Costs, the LTA Estimated Capital Costs and the MFP Estimated Capital Costs;

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

"**Extended Force Majeure Period**" has the meaning set forth in **Section 11.3(a)(ii)**;

"**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 this Agreement and for its use, operation, maintenance, repair and rehabilitation during, and decommissioning and removal at the end of, its Service Life;

"**Federal Crown**" means Her Majesty the Queen in Right of Canada;

"**Financing Costs**" means all costs incurred by either of the Parties with respect to debt and/or equity financing of the Actual Capital Costs of the Maritime Link in the following categories:

(a) interest to the Commercial Operation Date;

(b) costs incurred that are directly attributable to the arrangement of debt or equity financing, including costs associated with legal, tax, accounting, technical and other internal or third party advisors;

(c) underwriting and commitment fees;

(d) rating agency fees;

(e) costs of financing cash reserves required by lenders; and

(f) travel costs associated with a Party's financing effort,

provided however that (i) to the extent that any type of Financing Costs is excluded in the determination of AFUDC, costs of that type shall be deemed to be Capital Costs, and (ii) for greater certainty, Financing Costs excludes Return on Equity;

"**First Commercial Power**" means the date following the Commercial Operation Date of the Maritime Link upon which Nalcor commences delivery of the Nova Scotia Block to Emera pursuant to the Energy and Capacity Agreement;

"**First Party**" has the meaning set forth in **Section 8.8(o)** or **Section 8.8(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 Project 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 ML Project, 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 a Contractor that constitutes a force majeure, excusable delay or similar relief event to the extent that the Contractor is relieved from the performance of its obligations under the applicable Project 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;

"**Foreign Jurisdiction**" has the meaning set forth in **Section 8.8(p)**;

"**Formal Agreements**" means the agreements listed in **Schedule 3**;

"**Gatekeeper**" means the Person for a Party responsible to make a decision at that Party's Decision Gate;

"**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;

"**Grant**" has the meaning set forth in **Section 6.2(a)**;

"**Granting Party**" has the meaning set forth in **Section 16.2(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 Transfer Date, 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 13.4(a)**;

"**Indemnitor**" has the meaning set forth in **Section 13.4(a)**;

"**Initial Service Life**" means the Service Life of the Maritime Link as at First Commercial Power;

"**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 Project Data, 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 Project Data, 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;

"**Interconnection Operators Agreement**" means the agreement dated July 31, 2012 between NLH and NSPI relating to the interconnected operations of NLH and NSPI;

"**Interconnection Point**" has the meaning set forth in the Interconnection Operators Agreement;

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

"**JDA Effective Date**" means July 31, 2012;

"**JDC-ML**" means the joint development committee for the Maritime Link established prior to the JDA Effective Date and continued pursuant to **Section 3.1(a)**;

"**Joint Intellectual Property**" has the meaning set forth in **Section 16.2(c)**;

"**Joint Land Acquisition Team**" has the meaning set forth in **Section 6.1**;

"**Joint Operations Agreement**" means the agreement dated July 31, 2012 between Nalcor and Emera relating, among other things, to the operation and maintenance of the Transmission Assets;

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

"**LIL Development Activities**" has the meaning set forth in the NLDA;

"**LIL Estimated Capital Costs**" means the Estimated Capital Costs, as defined in the NLDA, for the LIL Development Activities, as established by Nalcor at LIL Sanction;

"**LIL Sanction**" has the meaning set forth in the NLDA;

"**LTA Development Activities**" has the meaning set forth in the NLDA;

"**LTA Estimated Capital Costs**" means the Estimated Capital Costs, as defined in the NLDA, for the LTA Development Activities, as established by Nalcor at LTA Sanction;

"**LTA Sanction**" has the meaning set forth in the NLDA;

"**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;

"**Land Acquisition Plan**" has the meaning set forth in **Section 6.2**;

"**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 16.2(f)**;

"**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 Development Activities**" has the meaning set forth in the NLDA;

"**MFP Estimated Capital Costs**" means the estimated costs for the MFP Development Activities, as established by Nalcor at MFP Sanction on a basis consistent with the

establishment of the Estimated Capital Costs, the LIL Estimated Capital Costs and the LTA Estimated Capital Costs;

"**MFP Sanction**" has the meaning set forth in the NLDA;

"**ML Decision**" has the meaning set forth in the preamble to this Agreement;

"**ML Final Cost Report**" has the meaning set forth in the NLDA;

"**ML Interim Cost Report**" has the meaning set forth in the NLDA;

"**ML Licensed IP**" means the Emera Background IP, the Nalcor Background IP and the Third Party Licensed IP;

"**ML O&M Costs**" has the meaning set forth in the Joint Operations Agreement;

"**ML Owned IP**" means the Emera Foreground IP and the Nalcor Foreground IP, including the Joint Intellectual Property;

"**ML Project**" means all of the activities and work, and the resulting completed and commissioned Maritime Link, as contemplated by this Agreement;

"**ML Project IP**" means the ML Owned IP and the ML Licensed IP;

"**ML Project Sites**" means the parcels of real property, including the seabed, upon which the various components of the Maritime Link are to be located, together with rights-of-way to access any such parcels;

"**MW**" means megawatt;

"**MWh**" means MW hours;

"**Maritime Link**" or "**ML**" means the facilities, including the Maritime Link NL AC Facilities, described in **Schedule 1**, and all Project Assets, and including the ML Project Sites and all improvements (including foundations, underground services, roads, buildings, erections and structures, whether temporary or permanent, erected or located in, on or upon the ML Project Sites from time to time; all other facilities, fixtures, appurtenances and tangible personal property, including inventories, of any nature whatsoever contained on or attached to the ML Project Sites from time to time; and all mechanical, electrical and other systems and other technology installed under or upon any of the foregoing);

"**Maritime Link (Emera) Transmission Service Agreement**" means the agreement dated July 31, 2012 between Emera and an Affiliate of Emera relating to Transmission Rights on the Maritime Link in respect of the Nova Scotia Block;

"**Maritime Link (Nalcor) Transmission Service Agreement**" means the agreement dated July 31, 2012 between Nalcor and Emera relating to Transmission Rights on the Maritime Link other than in respect of the Nova Scotia Block;

"**Maritime Link NL AC Facilities**" means the extension of and upgrades to the bulk energy transmission system in NL as contemplated by the Basis of Design and specifically identified through the System Impact Studies as necessary to enable the Maritime Link design flow of Energy and Capacity both into and out of the Island Interconnected System, excluding the NLH AC Upgrades;

"**Maritime Link NL HVdc Facilities**" means the high voltage direct current transmission line, the converter station at Bottom Brook, NL, and the associated equipment which connects to the Maritime Link NL AC Facilities, to the extent located in NL, and the undersea portion of the Maritime Link cables on the NL side of the Interconnection Point, as contemplated by the Basis of Design;

"**Maritime Link Project Team**" means the project team established in accordance with **Section 4.4**;

"**Maritime Link Transmission Service Agreements**" means, collectively, the Maritime Link (Emera) Transmission Service Agreement and the Maritime Link (Nalcor) Transmission Service Agreement;

"**Master AFE**" means the AFE by which funds for expenditure for post-Cost Sharing End Date Development Activities for the Maritime Link are Approved by the JDC-ML, reflecting all Capital Costs incurred to the date of that AFE and Capital Costs to be incurred to complete all Development Activities;

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

"**NL**" means the Province of Newfoundland and Labrador;

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

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

"**NLH AC Upgrades**" means the upgrades to the Island Interconnected System identified through the System Impact Studies as necessary for connecting the Maritime Link to the Island Interconnected System to enable the Maritime Link design flow of Energy and Capacity both into and out of the Island Interconnected System;

"**NL-NS Benefits Agreement**" means the Memorandum of Understanding effective as of November 18, 2010 between the Government of NL (as represented by the Minister of Natural Resources and the Minister for Inter-Governmental Affairs) and the Government of NS (as represented by the Minister of Energy) as it relates to industrial and employment benefits with respect to the ML Project, and including any subsequent agreement between such parties with respect to the same or related matters;

"**NS**" means the Province of Nova Scotia;

"**NS Crown**" means Her Majesty the Queen in Right of NS;

"**NS Ratepayers**" means NSPI's customers located in NS in respect of which the rates and tariffs for electricity service are regulated by the UARB;

"**NS Regulatory Application**" means the application to the UARB in accordance with the *Public Utilities Act* (Nova Scotia), the UARB Act, the *Maritime Link Act* (Nova Scotia) and the *Maritime Link Cost Recovery Process Regulations*, NS Reg. 189/2012, for approval by the UARB of the Maritime Link, as filed by NSPML on January 28, 2013;

"**NS Transmission Rights**" means Nalcor's Transmission Rights from the Delivery Point to the Nova Scotia-New Brunswick border in accordance with the Nova Scotia Transmission Utilization Agreement;

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

"**NSPI Cost of Capital Rate**" means a rate of interest equal to the prevailing pre-tax weighted average cost of capital for NSPI as accepted by the UARB from time to time in NSPI's annual capital expenditure plan;

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

"**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 17.1(a)**, 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 ML Project but which are not Nalcor Foreground IP;

"**Nalcor CEO Decision**" has the meaning set forth in **Section 3.2(b)**;

"**Nalcor Default**" has the meaning set forth in **Section 12.4**;

"**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, or which have been assigned to Nalcor or its Affiliates by Contractors or Subcontractors, whether or not Used in the ML Project, that (i) are made with any equipment, supplies or facilities the cost of which are attributable to the ML Project, or (ii) arise, at the time of the conception, development or reduction to practice thereof, out of work the cost of which is attributable to the ML Project;

"**Nalcor Group**" has the meaning set forth in **Section 13.2**;

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

"**Nalcor Post-CSED Costs**" means all Capital Costs incurred by Nalcor in connection with Development Activities on and after the Cost Sharing End Date and in accordance with the then current AFE, including:

(a) Nalcor's internal costs, including the costs of its employees and consultants who work on the ML Project either as part of the Maritime Link Project Team or otherwise;

(b) expenses of Nalcor's legal, tax, accounting, technical and other advisors; and

(c) amounts paid by Nalcor pursuant to Nalcor Project Contracts, but excluding costs incurred by Nalcor referred to in **Section 3.8**;

"**Nalcor Project Contract**" means a Project Contract entered into by Nalcor;

"**Nalcor Rights**" has the meaning set forth in **Section 17.1(a)**;

"**New Taxes**" means:

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

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

"**Newfoundland and Labrador Development Agreement**" or "**NLDA**" means the agreement dated July 31, 2012 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 16.4(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 19.1**;

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

"**Nova Scotia Transmission Utilization Agreement**" means the agreement dated July 31, 2012 between Emera and Nalcor relating to the provision of transmission service by Emera to Nalcor through NS;

"**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;

"**Original ML-JDA**" has the meaning set forth in the preamble to this Agreement;

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

"**Payee**" has the meaning set forth in **Section 8.10(a)**;

"**Payor**" has the meaning set forth in **Section 8.10(a)**;

"**Permitted Encumbrances**" means:

(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 Development 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; and

(e) security related to the financing of the Maritime Link,

provided however, that in any circumstance provided herein where the interests of Emera in the Project Assets 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;

"**Pre-CSED AFE**" means the AFE and any Supplemental AFEs by which funds for expenditure of Capital Costs for Pre-CSED Work for the Maritime Link are Approved by the JDC-ML, reflecting all Capital Costs incurred to the date of that AFE and Capital Costs to be incurred to complete the Pre-CSED Work;

"**Pre-CSED Costs**" means the Capital Costs incurred by Nalcor or Emera, as the case may be, prior to the Cost Sharing End Date;

"**Pre-CSED Work**" means (i) the Development Activities that have been completed or partially completed prior to the JDA Effective Date, and (ii) the further Development Activities carried out from the JDA Effective Date until the Cost Sharing End Date as contemplated by the Pre-CSED Work Program and Budget;

"**Pre-CSED Work Program and Budget**" has the meaning set forth in **Section 5.1(a)**;

"**Previously Incurred Costs**" means the costs incurred by Nalcor for Development Activities up to the TS Effective Date which are determined and calculated based upon the principles contained in the Cost Accounting Protocol, plus applicable interest calculated using the NSPI Cost of Capital Rate from the time such costs were incurred by Nalcor until they are paid by Emera pursuant to **Section 8.2(b)**;

"**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;

"**Procurement Outlook**" has the meaning set forth in **Section 4.5(b)(i)(F)**;

"**Project Assets**" means all real and personal property, contracts, choses in action, assets and undertakings used for the purposes of the ML Project from time to time, including Facility Real Property Interests and Project Data;

"**Project Contract**" means a contract entered into by or on behalf of Emera or Nalcor, as the case may be, with a Person engaged to perform work or provide services, equipment, materials or supplies forming part of or procured in connection with Development Activities;

"**Project Data**" means 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, financial information, engineering reports, environmental reports, information concerning Facility Real Property Interests, field notes, sketches, photographs, computer programs, records or software (in both source code and object code form), specifications, models or other information resulting from Development Activities, and includes the media on which such data and information is stored, obtained or received by either Party;

"**Project Director**" means the person appointed by Nalcor as the Project Director as provided in **Section 4.2**;

"**Project Execution Plan**" means a statement of execution methodology for the ML Project, setting out in a structured form the ML Project scope, objectives and relative priorities based on the Project Policies;

"**Project Manager**" means the person appointed by Emera as the Project Manager as provided in **Section 4.3(a)**;

"**Project Milestones**" means the key ML Project milestones as identified in the Project Schedule;

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

"**Project Policies**" has the meaning set forth in **Section 4.1(b)**;

"**Project Schedule**" means the ML Project schedule or schedules Approved by the JDC-ML, as such schedule or schedules may be extended (i) as a result of the operation of **Section 9.1** or **9.3**, or (ii) as Approved by the JDC-ML as a result of additions, modifications, alterations, substitutions, variations, deductions or cancellations of any aspect of the Development Activities;

"**Projected Overrun**" means the amount, if any, by which the then current Estimated Capital Costs exceed the sum of:

(a) the DG3 Costs; and

(b) the additional Capital Costs, if any, approved by the UARB for recovery from NS Ratepayers with respect to all prior applications made by Emera pursuant to **Section 8.2(d)**;

"**Recipient Party**" has the meaning set forth in **Section 18.2(a)**;

"**Redevelopment**" means one or more programs of activities undertaken to replace major components of the Maritime Link, resulting in a restarted Service Life of the Maritime Link and for greater clarity, excludes normal maintenance activities or activities relating to sustaining capital reinvestment to ensure full operation of the Maritime Link 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;

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

"**Return on Equity**" means an amount derived by applying the rate of return on equity, as approved by the UARB, to the equity invested related to the Maritime Link from time to time;

"**Sanction**" means final approval by a Party to proceed to commencement of construction of the Maritime Link, as evidenced by the passing of a resolution of the board of directors of such Party authorizing the Party to undertake activities, enter into contractual obligations and incur costs as required for the purposes of the completion of the Development Activities;

"**Sanction Agreement**" has the meaning set forth in the preamble to this Agreement;

"**Service Life**" means the period of time immediately following Commissioning during which the Maritime Link can continue to transmit Energy and Capacity at required reliability levels, and for greater clarity, a new Service Life will be established upon any Redevelopment of the Maritime Link;

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

"**Subcontract**" means a contract entered into by a Contractor or a Subcontractor with a Person to perform work or provide services or supplies as part of the Development Activities;

"**Subcontractor**" means any Person (other than a Contractor) retained to perform work or provide services or supplies as part of the Development Activities;

"**Supplemental AFE**" means the document used to secure Approval of the JDC-ML for Capital Costs that are outside the scope of, or in excess of the authorized amount under the then current AFE, reflecting all Capital Costs incurred to the date of that AFE, plus Capital Costs for which funding approval is requested;

"**Supplemental Decision**" has the meaning set forth in the preamble to this Agreement;

"**Supporting Material**" has the meaning set forth in **Section 8.10(a)**;

"**System Impact Studies**" means the series of studies, including transmission studies, necessary to confirm the reliable operation of the regional bulk energy transmission systems upon the interconnection of the NL electricity system and the NS electricity system, as requested by the JDC-ML;

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

"**TS Effective Date**" means November 18, 2010;

"**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 11.1**;

"**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 13.1** or **13.2**;

"**Third Party Costs**" has the meaning set forth in the Cost Accounting Protocol;

"**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 the ML;

"**Third Party Pre-CSED Costs**" has the meaning set forth in **Section 8.1(a)**;

"**Transfer Date**" means the date of Nalcor's acquisition of ownership of the Maritime Link pursuant to this Agreement or any other Formal Agreement;

"**Transmission Assets**" means the Labrador-Island Link, the Maritime Link and the Labrador Transmission Assets;

"**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);

"**UARB Approved Amount**" means the total Capital Costs and applicable AFUDC approved in the UARB Decision plus all additional Capital Costs and applicable AFUDC approved for recovery by the UARB in response to applications made by Emera pursuant to **Section 8.2(d)**;

"**UARB Decision**" means the ML Decision together with the Supplemental Decision;

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

"**Unapproved Overrun**" means the amount, if any, by which the Actual Capital Costs exceed the sum of:

(a) the DG3 Costs; and

(b) the additional Capital Costs, if any, approved by the UARB for recovery from NS Ratepayers with respect to all applications made by Emera pursuant to **Section 8.2(d)**;

"**Unrecovered Additional O&M Costs**" has the meaning set forth in **Section 3.2(e)(ii)**;

"**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;

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

"**Work Program**" means a program Approved by the JDC-ML detailing Development Activities, including System Impact Studies, to be undertaken by a Party during the period to which such Work Program relates.

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, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the JDA Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.

(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 this Agreement, or where this Agreement is not applicable, shall be done in accordance with US GAAP.

(e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.

(f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.

(g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.

(h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a

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

(i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

(j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.

(k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

(l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be "approved", "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 18**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

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

Schedule 1	-	Basis of Design
Schedule 2	-	Cost Accounting Protocol
Schedule 3	-	Formal Agreements
Schedule 4	-	Form of Assignment Agreement
Schedule 5	-	Dispute Resolution Procedure

1.6 Inter-Relationship with Original ML-JDA

Effective as of the A&R Effective Date, this Agreement amends and restates the Original ML-JDA in its entirety, it being understood and agreed that all liabilities and obligations under the Original ML-JDA existing or arising with respect to occurrences prior to the A&R Effective Date will survive and continue to exist, and neither of the Parties is waiving any of its rights or remedies in respect thereof; provided however that obligations that under the Original ML-JDA

would have continued until or arisen upon or as a result of Sanction by both Parties will continue only until or arise only upon or as a result of the occurrence of the Cost Sharing End Date.

ARTICLE 2
BASIS AND SCOPE OF PROJECT

2.0 Commitment to Proceed

Sanction by each of Nalcor and Emera having occurred, both Parties are committed to cause the Maritime Link to be completed, as contemplated by and in accordance with the terms and conditions of this Agreement. Emera shall proceed to construct and Commission the Maritime Link in accordance with the UARB Decision and this Agreement.

2.1 Maritime Link

(a) ML Project - The ML Project shall consist of facilities for converting and transmitting Energy and Capacity from NL to Cape Breton Island, NS, and includes the Maritime Link NL AC Facilities. The Maritime Link shall be designed, engineered and constructed to have a capacity of 500 MW and an Initial Service Life of 50 years. Such design criteria together with the description of the Maritime Link in **Schedule 1** shall form the basis for the development of the Maritime Link under this Agreement, subject to changes thereto Approved by the JDC-ML by way of revisions to the Basis of Design and applicable Project Execution Plans after the Cost Sharing End Date, provided however that, unless otherwise agreed in writing by the Parties, no such revisions may be made that would result in the Maritime Link having a capacity of less than the capacity specified in the Basis of Design as at the Cost Sharing End Date, or an Initial Service Life of less than the Initial Service Life as at such time as determined by the JDC-ML pursuant to **Section 3.4(a)(iii)**.

(b) Maritime Link NL AC Facilities - Emera will own, maintain and be responsible for the capital, operating and maintenance costs of the Maritime Link NL AC Facilities.

(c) NLH AC Upgrades - NLH will own and maintain the NLH AC Upgrades. In accordance with NLH's standard interconnection procedures, Emera will be responsible for the capital costs of the NLH AC Upgrades and for the incremental operating and maintenance costs related thereto, but only to the extent that such costs are directly attributable to and required for the interconnection of the Maritime Link with the Island Interconnected System. Emera shall enter into an asset interconnection agreement with NLH in form and substance satisfactory to Emera, acting reasonably.

(d) Operational Control of Maritime Link NL AC Facilities - Emera shall enter into a multi-party pooling agreement and related agreements with the NL System Operator, in form and substance satisfactory to Emera, acting reasonably, to enable the NL System Operator to have Operational Control of the Maritime Link NL AC Facilities and to offer network transmission service using the Maritime Link NL AC Facilities for the purposes of supplying NL native load customers and for offering

point-to-point transmission service for Energy and Capacity exported from and imported to the NL bulk energy transmission system.

(e) Operational Control of Maritime Link NL HVdc Facilities - Emera shall enter into a transmission operating agreement with the NL System Operator in form and substance satisfactory to Emera, acting reasonably, to enable the NL System Operator to have Operational Control of the Maritime Link NL HVdc Facilities, consistent with the Interconnection Operators Agreement.

(f) Connection of Maritime Link to NS Transmission System - Emera shall enter into:

(i) an asset interconnection agreement with NSPI with respect to the interconnection of the Maritime Link with the bulk energy transmission system in Nova Scotia; and

(ii) a transmission operating agreement with the NS System Operator to enable the NS System Operator to have Operational Control of the Maritime Link, except to the extent provided in **Sections 2.1(d)** and **2.1(e)**, and consistent with the Interconnection Operators Agreement.

The agreements referred to in this **Section 2.1(f)** must be acceptable to Nalcor, acting reasonably.

(g) Time for Concluding Agreements - Emera shall make commercially reasonable efforts to enter into the agreements referred to in **Sections 2.1(c)**, **2.1(d)** and **2.1(e)** by July 31, 2014 and to enter into the agreements referred to in **Section 2.1(f)** by August 31, 2014.

(h) Capacity Expansion - Emera, at its option, may develop the Maritime Link with a capacity in excess of the capacity provided for in the Basis of Design, with the additional Development Activities and incremental costs (the "**Additional Capacity Costs**") required to create such additional capacity being at Emera's sole cost and risk. Prior to Emera exercising this option, the additional Development Activities must have been reviewed and Approved by the JDC-ML, Emera must have confirmed in writing to Nalcor that Emera will pay the Additional Capacity Costs, and the Parties must have discussed and may agree upon the commercial terms in regard to the compensation for the Transmission Rights associated with such additional capacity (the "**Additional Transmission Rights Terms**"). If Emera exercises its option under this **Section 2.1(h)** it shall give Notice to Nalcor and the following will apply:

(i) all Additional Capacity Costs shall be separately identified in the ML Project accounts and in all financial reports;

(ii) notwithstanding any other provision of this Agreement, no Additional Capacity Costs will constitute Capital Costs for any purpose under this Agreement;

(iii) the Transmission Rights associated with such additional capacity will be owned by Nalcor; and

(iv) the Parties shall agree upon the Additional Transmission Rights Terms applicable if and when Nalcor uses such Transmission Rights, if not previously agreed, provided however that if the Parties fail to reach agreement the Additional Transmission Rights Terms will be on reasonable commercial terms and the disagreement of the Parties with respect thereto shall be resolved as a Specified Dispute. **Section 1.2(m)(i)** applies to this **Section 2.1(h)(iv)**.

2.2 Fundamentals of the ML Transaction

Without limiting any other provisions of this Agreement or any other Formal Agreement, the Parties acknowledge and confirm that their mutual agreement to enter into the transactions contemplated by this Agreement is based on the following covenants:

(a) Emera shall pay the costs of the Maritime Link in accordance with **Section 8.2**, own the Maritime Link, and provide to Nalcor and its Affiliates transmission capacity in the Maritime Link and the NS Transmission Rights in exchange for which Emera shall be entitled to receive the Nova Scotia Block for a term of 35 years from First Commercial Power; and

(b) if the Actual Capital Costs exceed 20% of the Estimated Overall Project Costs, Nalcor shall make a payment in order to compensate Emera as provided in **Section 2.5**.

2.3 Estimated Capital Costs of Other Defined Assets

The Parties acknowledge that Nalcor has provided to Emera a calculation (with any necessary explanatory information) of the LIL Estimated Capital Costs, the LTA Estimated Capital Costs and the MFP Estimated Capital Costs.

2.4 Exclusivity

Prior to the Cost Sharing End Date, neither Party shall enter into, and each Party shall ensure that none of its Affiliates enters into, any commercial arrangements, or makes commitments of any other kind that would prevent either or both of the Parties from being able to perform any of their obligations under the Formal Agreements. Subject to the first sentence of this **Section 2.4**, this Agreement shall not in any way preclude either Party or its Affiliates from pursuing and entering into commercial arrangements, or making commitments of any other kind, with third parties.

2.5 True Up Adjustment

(a) Adjustment Amount. Nalcor shall be liable to Emera for the amount (the "**Adjustment Amount**") determined by subtracting $1,555,400,000 (representing 20% of the Estimated Overall Project Costs) from the Actual Capital Costs (which

Actual Capital Costs for the purposes of this calculation only shall not exceed the DG3 Costs). The Adjustment Amount, if any, shall be payable by Nalcor not later than 30 days after the Actual Capital Costs are finally determined.

(b) Intention - For greater certainty:

(i) the Adjustment Amount shall be independent of any cost obligations imposed upon either Party for Unapproved Overruns, if any, and any Actual Capital Costs in excess of the DG3 Costs shall be dealt with in accordance with the provisions of **Sections 8.2(d)**, **8.2(e)**, **8.2(f)** and **8.2(g)**; and

(ii) there shall be no true-up adjustment of any kind payable by either Party in connection with this Agreement, except as provided for in this **Section 2.5**.

ARTICLE 3
PROJECT GOVERNANCE

3.1 Establishment of JDC-ML

(a) Continuance of JDC-ML - The joint development committee for the Maritime Link established prior to the JDA Effective Date is hereby continued as the JDC-ML for the purposes of this Agreement. The current representatives of the Parties appointed to that joint development committee shall continue as the respective representatives of the Parties on the JDC-ML under this Agreement until they resign or are replaced in accordance with the provisions of this **Article 3**. Subject to **Section 3.3(a)**, from time to time the Parties may appoint other representatives, either in replacement of or in addition to such current representatives.

(b) Duty of Members - Members of the JDC-ML, when considering any consensus recommendations provided to the JDC-ML by the Project Manager and the Project Director, when considering differences of view between the Project Manager and the Project Director, and in all their deliberations, are expected to make their own assessment and form their own best judgment of the matters before them.

3.2 Decision Making

(a) Decisions by Consensus - The JDC-ML shall attempt to reach a consensus on all matters coming before it. In the rare circumstance where the JDC-ML cannot reach a consensus decision on any matter within 15 days of the matter coming before it, the matter shall be considered for referral, but in no circumstances shall it go beyond 30 days (unless both Parties agree to extend that period) before it is referred to the CEOs of the Parties to reach consensus.

(b) Resolution where no Consensus - If the CEOs of the Parties are unable to reach a consensus decision within seven days of the matter being referred to them pursuant to **Section 3.2(a)** (unless both CEOs agree to extend that period), then the CEO of Nalcor shall make the final decision (a "**Nalcor CEO Decision**") and Nalcor shall give

Notice of the Nalcor CEO Decision to Emera within two Business Days after the date of the Nalcor CEO Decision. If the CEO of Nalcor is required to make a Nalcor CEO Decision, it shall be made using the following guidelines (the "**Decision Guidelines**"):

(i) to fulfill only the Basis of Design and scope of the ML Project as at the Cost Sharing End Date;

(ii) reflect prudent front-end loading criteria in accordance with normal practice in the industry in Canada for Development Activities prior to the Cost Sharing End Date;

(iii) reflect prudent construction, installation and operating criteria in accordance with normal practice in the industry in Canada;

(iv) conform with the standard of care normally practiced in the industry in Canada; and

(v) conform with the guidelines required by any marine warranty surveyor appointed by insurers.

(c) Deemed Approval by JDC-ML - Where any matter is decided by consensus of the CEOs of the Parties, or by a Nalcor CEO Decision, such matter, while not decided by the JDC-ML, for all purposes of this Agreement shall be deemed to have been Approved by the JDC-ML.

(d) Emera Acceptance of Nalcor CEO Decision - Unless Emera gives Notice to Nalcor within 60 days after Emera's receipt of Notice of a Nalcor CEO Decision that Emera considers the Nalcor CEO Decision not to have been made in compliance with the Decision Guidelines, Emera will be deemed to have accepted the Nalcor CEO Decision and Nalcor will have no liability pursuant to **Section 3.2(e)**.

(e) Non-Compliant Nalcor CEO Decision - If any Nalcor CEO Decision is not made in compliance with the Decision Guidelines and Emera gives Notice to Nalcor pursuant to **Section 3.2(d)** then, notwithstanding **Section 3.2(c)** or **8.2(e)**, Nalcor shall be responsible for:

(i) any Unapproved Overrun; and

(ii) any additional costs of operating and maintaining the Maritime Link during the term of the Joint Operations Agreement that will be incurred by Emera and not recovered by Emera from NS Ratepayers ("**Unrecovered Additional O&M Costs**"),

to the extent resulting from the failure of a Nalcor CEO Decision to comply with the Decision Guidelines. The Notice referred to in **Section 3.2(d)** shall include an estimate of the costs arising from the Nalcor CEO Decision to the extent that such costs can reasonably be estimated. For greater certainty, such estimates shall not

limit Emera's recovery of the associated actual Unapproved Overrun or Unrecovered Additional O&M Costs when determined.

(f) Dispute Resolution - Any Claim made by Emera pursuant to **Section 3.2(e)** shall be considered to be a Dispute and, at the instance of either Party, shall be resolved pursuant to the Dispute Resolution Procedure. Resolution of such Dispute shall include a determination of any liability of Nalcor for an Unapproved Overrun and any Unrecovered Additional O&M Costs. If any Unrecovered Additional O&M Costs are not quantifiable at the time of such determination, they shall be quantified in accordance with the Joint Operations Agreement.

(g) Exception - Notwithstanding anything in this **Section 3.2**, if the JDC-ML fails to reach consensus on the determination of the Initial Service Life of the Maritime Link as at the A&R Effective Date or as at First Commercial Power, as contemplated by **Section 3.4(a)(iii)**, such matter shall not be referred to the CEOs of the Parties pursuant to **Section 3.2(a)** or be the subject of a Nalcor CEO Decision, but shall be referred by the Parties for resolution as a Specified Dispute.

3.3 JDC-ML Composition, Quorum, Duration and Procedures

(a) Composition - The JDC-ML shall at all times be composed of equal representation from Nalcor and Emera, with at least two representatives of each Party. There shall be two co-chairs: one Nalcor representative chosen by Nalcor and one Emera representative chosen by Emera.

(b) Quorum - Subject to **Section 3.5(k)**, the quorum for the transaction of business by the JDC-ML shall be the two co-chairs or their delegates.

(c) Duration - The JDC-ML shall continue during the Term of this Agreement.

(d) Procedures - Except as otherwise provided for in this Agreement, the JDC-ML shall establish procedures for the conduct of its affairs.

3.4 Powers of the JDC-ML

(a) Authority of JDC-ML - Without derogating from the authority granted by other provisions of this Agreement, the JDC-ML shall:

(i) receive, consider and, if appropriate, as determined by the JDC-ML, Approve, recommendations of the Project Manager and the Project Director with respect to the Development Activities regarding the ML Project, including with respect to:

(A) approval of the Project Schedule and the initial Project Execution Plan and any subsequent changes in the Project Execution Plan and the Project Schedule;

(B) approval of AFEs and Budgets and each Annual Work Program and Budget;

(C) approval of any changes to the Pre-CSED AFE;

(D) approval of any changes to the then current AFE to authorize additional expenditures in excess of $1,000,000, and approval of all changes to the then current AFE after additional expenditures previously approved, if any, in the aggregate exceed one percent of the total expenditure authorized by the Master AFE;

(E) all Decision Gate submissions as part of the Decision Gate process, acknowledging that final Decision Gate decisions rest with the responsible Gatekeepers;

(F) appointment and termination of subsea, converter stations, overhead transmission, and engineering, procurement and construction Contractors, and such other key Contractors as determined by the Parties;

(G) appointment and removal of key management personnel on the Maritime Link Project Team;

(H) approval of key Project Contracts, as determined by the Project Manager in consultation with the Project Director;

(I) non-utility regulatory applications and decisions, including environmental assessments;

(J) approval of all Project Contracts with Affiliates of the Parties; and

(K) changes in the Basis of Design after the A&R Effective Date;

(ii) decide issues (including those set out in the foregoing clause **(i)**) on which the Project Director and the Project Manager have failed to reach consensus; and

(iii) determine the Initial Service Life of the Maritime Link as at the A&R Effective Date and as confirmed or modified as at First Commercial Power.

(b) Approval Conditions Permitted - The JDC-ML 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.

(c) Support for Approvals - The Project Manager shall cause all matters that are to be Approved by the JDC-ML under this Agreement to be brought before the JDC-ML in

a timely manner, and shall provide to the JDC-ML all related background information and any other information requested by the JDC-ML.

(d) Appointment of Sub-Committees - From time to time, as it deems appropriate, the JDC-ML may appoint standing, due diligence or other teams or subcommittees. Nalcor and Emera are each entitled to have at least one representative appointed to each sub-committee of the JDC-ML.

3.5 Meetings of JDC-ML

(a) Regular Meetings - The JDC-ML shall meet not less frequently than monthly during the Term in accordance with the schedule determined by the JDC-ML, or at such more frequent intervals as the JDC-ML may decide from time to time to be appropriate.

(b) Calling of Meetings - Either co-chair may call a meeting of the JDC-ML by issuing a notice to the other co-chair of the JDC-ML to that effect. Either Party may request a meeting of the JDC-ML by issuing a notice to a co-chair of the JDC-ML to that effect. Upon receiving notice of a requested meeting, the co-chair shall promptly call for a meeting by issuing a Notice to the other co-chair of the JDC-ML 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 co-chair.

(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)**, **3.5(f)** and **3.5(k)** may only be waived with the unanimous consent of the JDC-ML.

(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 JDC-ML 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 JDC-ML (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 co-chair determined by the JDC-ML 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 JDC-ML members to properly and effectively consider the matters to be discussed at such meeting.

(f) Additions to Agenda - A member of the JDC-ML may, by notice to the other members given not less than three days prior to a meeting of the JDC-ML, add matters to the agenda for that meeting, provided sufficient information is provided with such notice to permit the other JDC-ML 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 JDC-ML, and provided both co-chairs or their delegates consent, the JDC-ML may, at any meeting of the JDC-ML, consider and decide on any matter not otherwise on the agenda for that meeting.

(h) Location of Meetings - Meetings of the JDC-ML 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 JDC-ML.

(i) Co-Chairs' Duties for Meeting - With respect to meetings of the JDC-ML, the chair duties shall rotate between the co-chairs as determined by the JDC-ML, and 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 a co-chair fails to perform his or her duties, such duties may be performed by the other co-chair.

(j) Authority to Vote - The JDC-ML 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 JDC-ML must be duly authorized to represent that Party with respect to any matter that is within the powers of and properly before the JDC-ML. The Nalcor representatives and the Emera representatives shall separately determine the positions of Nalcor and Emera respectively, and each Party 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 of Quorum - If a quorum for a meeting of the JDC-ML is not present at an otherwise duly constituted meeting of the JDC-ML, that meeting shall be adjourned, but may be reconvened upon not less than five days' prior notice given by any member of the JDC-ML to the other members of the JDC-ML, and at such subsequent meeting the persons attending shall constitute a quorum.

(l) Attendance by Project Director and Project Manager - The Project Director and the Project Manager shall attend the regular meetings and, if requested, any special meetings, of the JDC-ML to review progress and discuss any issues regarding the ML Project.

(m) Advisors - Each Party may, at its cost, or as otherwise agreed by the Parties, also bring to any JDC-ML meeting such reasonable number of technical and other advisors it considers necessary or appropriate to address the matters being considered at the meeting.

(n) Telephone or Video Conference Meetings - Participation in JDC-ML 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.

(o) Minutes - The co-chair presiding at a meeting of the JDC-ML shall provide each member of the JDC-ML with draft minutes of each JDC-ML meeting within 14 days following the meeting. The minutes shall be considered for approval at the next meeting of the JDC-ML.

3.6 Resolution in Writing

An original, facsimile or PDF copy of a resolution of the JDC-ML signed by both co-chairs or their delegates shall be effective as if passed at a duly called meeting of the JDC-ML.

3.7 Decisions of JDC-ML Binding

All consensus decisions of the JDC-ML or the CEOs of both Parties, and all decisions of the CEO of Nalcor, pursuant to and in accordance with this Agreement shall be conclusive and binding on both Parties for all purposes.

3.8 Costs of JDC-ML Participation

Each Party shall bear its own internal costs related to the administration of the JDC-ML.

ARTICLE 4
PROJECT MANAGEMENT

4.1 General Principles

(a) Project Excellence - The Project Manager and the Project Director shall consult with each other and work together in good faith to achieve project excellence and execution. It is expected that the Project Manager and the Project Director shall find consensus, but it is recognized that, despite their best endeavours, there will be

occasions on which consensus cannot be achieved and the matter will have to be referred to the JDC-ML for resolution.

(b) Project Policies - The Project Manager, in consultation with the Project Director, shall establish policies, processes and procedures applicable to the conduct of Development Activities (the "**Project Policies**").

4.2 Project Director

Nalcor shall appoint the Project Director and define the duties, responsibilities and accountabilities of this role.

4.3 Project Manager

(a) Appointment of Project Manager - Emera shall appoint the Project Manager. Emera agrees to consult with the Project Director during the course of its efforts to recruit and appoint the Project Manager.

(b) Reporting Relationship - The Project Manager shall report to the Project Director, and will have expenditure approval authority up to a level commensurate with project managers for the Muskrat Falls Plant and Labrador-Island Link projects.

(c) Role of Project Manager - The Project Manager shall provide overall guidance and leadership to the Maritime Link Project Team and has overall responsibility and authority in accordance with this Agreement to deliver the Maritime Link in a form that meets all established and agreed performance parameters regarding HSE, budget, costs, schedule and quality, using the Project Policies. The Project Manager, on behalf of Emera and in consultation with the Project Director, and with the Approval of the JDC-ML where required under this Agreement, shall have responsibility and authority in accordance with this Agreement for managing:

(i) Development Activities to be carried out by Emera, including the preparation, implementation, management, control and maintenance of AFEs, Budgets, Project Execution Plans, Work Programs, the Project Schedule and Project Policies; and

(ii) the Maritime Link Project Team.

(d) Notice of Termination - Emera shall provide Nalcor with Notice as soon as reasonably practicable of the death or resignation of or of its intention to remove, relocate or terminate the employment of the Project Manager.

4.4 Maritime Link Project Team

(a) Continuation or Establishment of Team - The Project Manager, in consultation with the Project Director, may continue, if constituted prior to the JDA Effective Date, or shall establish as soon as practical after the JDA Effective Date, a Maritime Link

Project Team which shall support the Project Manager in all aspects of the Development Activities.

(b) Composition of Maritime Link Project Team - Each Party is entitled to appoint an equal number of representatives to the Maritime Link Project Team, in accordance with the following principles and procedures:

(i) the Project Manager, in consultation with the Project Director, shall determine the positions which the Maritime Link Project Team requires to function effectively;

(ii) the Project Manager shall prepare a job description respecting each such position in consultation with the Project Director and shall distribute such descriptions to Nalcor and Emera within a reasonable time prior to the date on which he or she expects to make a decision with respect to filling such position, and such notice shall describe in sufficient detail the nature of the position to be filled and the earliest date on which the Project Manager, in consultation with the Project Director, expects or wishes to make a decision with respect to filling such position; and

(iii) if the position is a key management position, the Project Manager shall consult with the Project Director in advance of the selection of the candidate, and the selection will be subject to JDC-ML Approval pursuant to **Section 3.4(a)(i)(G)**.

(c) Objectives of Team - The fundamental object of the Maritime Link Project Team is to focus on project excellence and execution. The Parties recognize that (i) the team members should work together as an integrated team, (ii) best practices are critical to the decision making process, and (iii) decisions are to be made by the Maritime Link Project Team with the best interests of the project always in mind.

4.5 Reporting Obligations

(a) General - The Project Manager, in consultation with the Project Director, shall, unless otherwise directed by the JDC-ML, provide the reports described in this **Section 4.5**.

(b) Development Activities - The Project Manager shall provide to the JDC-ML on a timely basis each of the following in respect of the ML Project and Development Activities:

(i) as soon as practicable but not later than 30 days after the end of each month, a ML Project monthly report which shall be in a format determined by the Project Director, in consultation with the JDC-ML, setting forth:

(A) planning and progress data, including schedule considerations;

(B) HSE statistics and performance, progress, issues and opportunities;

(C) construction, engineering and procurement (and later Commissioning), team performance, progress, issues and opportunities;

(D) environmental and aboriginal team performance, progress, issues and opportunities;

(E) information regarding quality and benefits to allow either Party to report to the governments of NL and NS in accordance with the NL-NS Benefits Agreement;

(F) a procurement outlook for all anticipated purchases of materials and services, including the general procurement strategy proposed to be utilized to comply with local preference requirements ("**Procurement Outlook**"); and

(G) quality assurance statistics and performance, progress, issues and opportunities;

(ii) prompt reports of special events of importance, including any event of Force Majeure or incident involving loss of life, serious personal injury, actual or anticipated serious property damage, or Emera's inability to perform its obligations hereunder, any probable media coverage, public evacuations or any relevant actions of any Authorized Authority and any issues that may materially affect the Defined Assets other than the Maritime Link;

(iii) any other appropriate reports relating to Development Activities as may be requested by the JDC-ML from time to time; and

(iv) such additional information as a Party reasonably requests, provided that the requesting Party pays the reasonable costs of preparation of that information.

(c) Financial Reporting - The Project Manager shall provide to the JDC-ML the following financial reports showing costs as calculated in accordance with the Cost Accounting Protocol as soon as practicable but not later than 30 days after the end of each month:

(i) currency and accounting reports, including information on accruals, cost allocations and HST; and

(ii) a monthly statement for the ML Project setting forth:

(A) the amount and description of Actual Capital Costs incurred during the immediately preceding month;

(B) the amount and description of Actual Capital Costs incurred under the current AFE from the beginning of the year to the end of the immediately preceding month;

(C) the amount and description of Actual Capital Costs incurred under the current AFE from commencement of expenditures under such AFE to the end of the immediately preceding month;

(D) an estimate and description of Capital Costs to be made during the remainder of the current year;

(E) an estimate and description of remaining Capital Costs required up to Commercial Operation;

(F) variances between the actual and estimated remaining Capital Costs for the current year as against the Budget for the current year;

(G) variances between the estimated Capital Costs required up to Commercial Operation and Capital Costs Approved in the current AFE;

(H) forecasts of the Capital Costs for the ML Project by currency; and

(I) such other financial information as the JDC-ML may direct from time to time.

(d) Reporting to Authorized Authorities - The Project Manager shall prepare and file with the appropriate Authorized Authorities all reports, records and information required by Applicable Law in respect of the ML Project.

4.6 Records and Audits

(a) Accounting, Books, Records and Accounts - Each Party shall:

(i) maintain at all times at a location within NL or NS with respect to all Development Activities undertaken by such Party, proper and accurate books, records, accounts and documents in which fair and proper entries, in accordance with the Cost Accounting Protocol, shall be made of all activities and transactions in respect of the ML Project, this Agreement and the Project Contracts, and copies of all Project Data, test results and samples relating to the Development Activities;

(ii) ensure that the other Party has access to such books, records, accounts, documents, Project Data, test results and samples, in accordance with **Section 4.7** in order that it may exercise its rights of inspection and audit; and

(iii) ensure that such books, records, accounts, documents, Project Data, test results and samples shall not be destroyed until the other Party's rights of access, inspection and audit have expired or, if proceedings under the Dispute Resolution Procedure, or in connection with any Project Contract, or any Legal Proceeding, to which such books, records, accounts, documents, Project Data, test results and samples are relevant have been commenced, until such proceedings have been finally concluded.

(b) Right to Inspect and Audit - Each Party shall have the right from time to time to inspect and audit the books, records, accounts, documents, Project Data, test results and samples maintained by the other Party and each of its Contractors and their Subcontractors relating to the ML Project, this Agreement or the Project Contracts.

4.7 Access and Information

(a) Right of Access - Each Party and its Representatives shall have the right on seven days' Notice to the other Party during the Regular Business Hours of the other Party, to enter upon any ML Project Site and any and all other premises or places where the other Party or any of its Contractors or Subcontractors or any other Person carries on any activity in any way relating to the ML Project, this Agreement or any Project Contract or where any books, records, accounts, documents, Project Data, test results and samples are kept relating to the ML Project, this Agreement or any Project Contract, to have access to such ML Project Site, premises, places, books, records, accounts, documents, Project Data, test results and samples, and to carry out such tests as such Party deems necessary in order to exercise its rights of inspection and audit or where necessary for the administration of this Agreement or to ascertain whether a breach has occurred under this Agreement or any Project Contract. This **Section 4.7(a)** does not apply to give Nalcor direct access and audit rights with respect to non-Affiliated Contractors and Subcontractors unless specifically agreed to in the applicable Project Contract.

(b) Information and Assistance - Each Party shall provide and shall cause its Contractors and Subcontractors to provide the other Party and its Representatives with:

(i) all requested information and documentation and access thereto on a timely basis; and

(ii) all reasonable assistance in the exercise by the other Party of its rights of access, inspection and audit hereunder, including all reasonable access to their officers, agents, supervisors, employees, contractors, suppliers, insurers, sureties, engineers and consultants, and to use commercially reasonable efforts to cause such persons to fully and accurately answer questions and comply with all requests of the other Party.

(c) Duration of Access and Audit Rights - The Parties' rights of access, inspection and audit pursuant to this Agreement shall expire 10 years after the satisfaction of all of the obligations of the Parties pursuant to this Agreement. Subject to and without

limiting **Section 8.10(d)**, which applies to disputed invoices referred to therein, any matters not disputed in writing by a Party within five years after the end of the calendar year in which the matter occurred will not be subject to the Dispute Resolution Procedure.

(d) Minimal Disruption - Each Party and its Representatives, in exercising rights of access, inspection and audit pursuant to this Agreement, shall use all reasonable efforts to minimize any disruption to any other Person.

(e) Copies of Documents - Each Party and its Representatives shall be entitled to make and retain copies of all books, records, accounts, documents, Project Data, test results and samples maintained for the purposes of the ML Project, this Agreement or the Project Contracts.

(f) No Relief from Obligations - The existence or the exercise by a Party or its Representatives of rights of access, inspection and audit shall not in any manner reduce or limit the obligations and responsibilities of the other Party pursuant to this Agreement or any Project Contract.

ARTICLE 5
PRE-COST SHARING END DATE ACTIVITIES

5.1 Pre-CSED Development Activities

(a) Pre-CSED Work Program and Budget - Planned Development Activities after the JDA Effective Date and prior to the Cost Sharing End Date and the estimated Capital Costs thereof are as described in the pre-Cost Sharing End Date Work Program and Budget prepared in accordance with the provisions of this Agreement (the "**Pre-CSED Work Program and Budget**"). The Pre-CSED Work Program and Budget for 2011 and 2012 already presented to and agreed by the Parties will be deemed to have been Approved by the JDC-ML on the JDA Effective Date. The Pre-CSED Work Program and Budget for 2013 and 2014 already presented to and agreed by the Parties will be deemed to have been Approved by the JDC-ML on the A&R Effective Date. The Parties acknowledge and agree that the Pre-CSED Work Program and Budget will be amended as required to include the Work Program until the Cost Sharing End Date, as determined by the Project Manager in consultation with the Project Director and as Approved by the JDC-ML. Each Party shall perform its obligations prior to the Cost Sharing End Date in accordance with the Pre-CSED Work Program and Budget. Either the Project Director or the Project Manager may propose changes to the Pre-CSED Work Program and Budget. No change to the Pre-CSED AFE or the Pre-CSED Work Program and Budget shall become effective until Approved by the JDC-ML.

(b) Amendment of Pre-CSED Work Program and Budget - A Party may, by Notice to the other Party, propose that the Pre-CSED Work Program and Budget be amended and the Pre-CSED AFE replaced. The JDC-ML shall consider such proposal and, if the JDC-ML so directs, Emera shall prepare and submit to Nalcor a revised Pre-CSED Work Program and Budget and Supplemental AFE incorporating any such amendments.

To the extent that any such amended Pre-CSED Work Program and Budget and Supplemental AFE are Approved by the JDC-ML, the Pre-CSED Work Program and Budget shall be amended and the Pre-CSED AFE shall be replaced, provided always that any such amendment and replacement shall not invalidate any authorized commitment or expenditure previously made by Emera or Nalcor.

(c) Site Acquisition and Regulatory Approvals - The Pre-CSED Work Program and Budget shall describe the activities of the Joint Land Acquisition Team, and the activities of the Parties with respect to Regulatory Approvals, pursuant to **Article 6**, required to be carried out prior to the Cost Sharing End Date.

5.2 [Intentionally deleted]

5.3 [Intentionally deleted]

5.4 Master AFE and Budget

(a) Approval of Master AFE and Budget - Prior to the Cost Sharing End Date, the Project Manager, in consultation with the Project Director, shall prepare and submit a recommended Master AFE and the related Budget to the JDC-ML. The JDC-ML shall consider, and may Approve the Master AFE and Budget. If the JDC-ML does not Approve the proposed Master AFE and Budget as submitted to it, the Project Manager shall make such amendments as may be directed by the JDC-ML and shall promptly resubmit the Master AFE and Budget for Approval, and the process under this **Section 5.4(a)** shall be repeated until the Master AFE and Budget are Approved by the JDC-ML. The Parties shall cause their representatives on the JDC-ML to make commercially reasonable efforts to approve the Master AFE and Budget not less than 30 days prior to the Cost Sharing End Date.

(b) Amendment of Master AFE and Budget - A Party may, by Notice to the other Party, propose that the Budget be amended and the Master AFE or any Supplemental AFE be replaced. The JDC-ML shall consider such proposal and, if the JDC-ML so directs, the Project Manager shall prepare and submit to the JDC-ML a revised Budget and Supplemental AFE incorporating any such amendments. To the extent that any such amended Budget and Supplemental AFE are Approved by the JDC-ML, the Budget shall be amended and the Master AFE or previous Supplemental AFE replaced, provided always that any such amendment and replacement shall not invalidate any authorized commitment or expenditure previously made by Emera or Nalcor.

5.5 [Intentionally deleted]

5.6 [Intentionally deleted]

5.7 [Intentionally deleted]

ARTICLE 6
LAND ACQUISITION AND REGULATORY APPROVALS

6.1 General

Prior to the JDA Effective Date, the Project Director and the Project Manager have designated members of the Maritime Link Project Team with a mandate to work together to identify and, where not already held by one of the Parties or its Affiliates, enable the Parties to acquire, separately or jointly, as may be appropriate, the Facility Real Property Interests (the "**Joint Land Acquisition Team**").

6.2 Land Acquisition Plan

The Joint Land Acquisition Team shall prepare and submit to the Project Manager and the Project Director, for approval, a comprehensive plan for the acquisition of all Facility Real Property Interests required for the ML Project (the "**Land Acquisition Plan**"). The Land Acquisition Plan shall be prepared having regard to, and shall contain recommendations and plans for acquisition of the Facility Real Property Interests in the name of Emera or an Emera Affiliate, by methods, using documentation, and resulting in acquired rights, consistent with this Agreement and the following principles:

(a) Existing Nalcor Sites - Facility Real Property Interests already held by Nalcor or a Nalcor Affiliate when the Land Acquisition Plan is submitted to the Project Manager and the Project Director, whether owned by Nalcor or a Nalcor Affiliate or held under easement or lease from the NL Crown or leased or held by statutory right from private landowners, shall be granted to Emera or an Emera Affiliate as and when needed, to the extent permitted by Applicable Law, by way of an assignment, easement, shared easement agreement, access agreement, surrender, licence to occupy, grant, long-term lease or statutory right or a sublease, if permitted under the head lease, with the consent of the head lessor, where required, on terms mutually agreed by the Parties (collectively, a "**Grant**"). Any such Grant shall be for nominal consideration or shall be in consideration of Emera's assumption of liability for any payments required to be made to third parties to maintain such Facility Real Property Interests, as applicable. All of the Facility Real Property Interests so granted will revert to Nalcor, or to the relevant Nalcor Affiliate, on the Transfer Date. If Nalcor or its relevant Affiliate cannot grant such Facility Real Property Interests to Emera or an Emera Affiliate, Nalcor shall, or shall cause its Affiliate to, hold such Facility Real Property Interests in trust for Emera until such time as such Facility Real Property Interests would have reverted to Nalcor, or to the relevant Nalcor Affiliate, pursuant to this **Section 6.2(a)**. **Section 1.2(m)(i)** applies to the first sentence of this **Section 6.2(a)**.

(b) Acquisition of Interests in NL - Facility Real Property Interests with respect to lands in NL shall be acquired at Emera's cost and held as follows:

(i) Facility Real Property Interests in NL Crown lands, including water lots, shall be acquired by way of grant, lease, easement or other arrangement with the

NL Crown, in the name of Emera or an Emera Affiliate, or to be transferred promptly to Emera or an Emera Affiliate, each on terms mutually agreed by the Parties, for nominal consideration, with reversionary interests or provision for transfer of the Facility Real Property Interests to Nalcor or a Nalcor Affiliate upon the Transfer Date. **Section 1.2(m)(i)** applies to this **Section 6.2(b)(i)**; and

(ii) Facility Real Property Interests in lands held by private landowners shall be acquired by purchase or easement in the name of Emera or an Emera Affiliate or Nalcor shall cause such interests to be acquired by Nalcor, a Nalcor Affiliate or NL for the benefit of Emera or an Emera Affiliate, or by other arrangements and transferred promptly to Emera or an Emera Affiliate, with reversionary interests or provision for transfer of the Facility Real Property Interests to Nalcor or a Nalcor Affiliate upon the Transfer Date.

The process of acquiring the Facility Real Property Interests described in this **Section 6.2(b)** shall commence as determined by the Joint Land Acquisition Team.

(c) Acquisition of Interests in NS - Facility Real Property Interests in NS Crown lands, including water lots, shall be acquired at Emera's cost in the name of Emera, or the appropriate Emera Affiliate, as applicable, by way of grant, lease or easement or other arrangement with the NS Crown. Facility Real Property Interests in lands, including water lots, held by private landowners in NS shall be acquired at Emera's cost in the name of Emera or the appropriate Emera Affiliate, as applicable, by purchase, easement or other arrangement. The process of acquiring the Facility Real Property Interests described in this **Section 6.2(c)** shall commence prior to the Cost Sharing End Date, and such Facility Real Property Interests shall be freely transferrable to Nalcor or an Affiliate of Nalcor, to the extent permitted by Applicable Law.

(d) Acquisition of Interests in Seabed of the Cabot Strait - Emera, with assistance from the Joint Land Acquisition Team, shall acquire at its cost Facility Real Property Interests in the seabed of the Cabot Strait, to the extent that such interests can be obtained by way of grants, leases, easements or other arrangements from the Federal Crown, the NL Crown, the NS Crown, and from private owners of water lots, as applicable. The process of acquiring the Facility Real Property Interests described in this **Section 6.2(d)** shall commence prior to the Cost Sharing End Date, and such Facility Real Property Interests shall be freely transferable to Nalcor or an Affiliate of Nalcor, to the extent permitted by Applicable Law. The Parties acknowledge that Emera will be unable to obtain Facility Real Property Interests beyond the Canadian territorial limits.

(e) Transferability of Interests - Emera shall ensure that all Facility Real Property Interests in NS and in the seabed of the Cabot Strait are acquired, or reacquired if already held, on terms mutually agreed by the Parties, and recorded or registered as

may be provided by Applicable Law to protect the rights of the interest holders. **Section 1.2(m)(i)** applies to the foregoing sentence. Emera shall ensure that all such agreements permit, to the extent permitted by Applicable Law and without the consent of any third party except an Authorized Authority having jurisdiction, the transfer or grant to Nalcor or an Affiliate of Nalcor of such Facility Real Property Interests on the Transfer Date. The transfer or grant on the Transfer Date shall be for nominal consideration or in consideration of Nalcor's assumption of liability for any payments required to be made to third parties to maintain such Facility Real Property Interests, as applicable, on the Transfer Date. Nalcor shall receive the Facility Real Property Interests or rights of access, usage and control comparable to those held by Emera or the relevant Emera Affiliate over the Facility Real Property Interests in NS and in the seabed of the Cabot Strait to the extent necessary for the development, construction, Commissioning, use, operation, maintenance, repair and rehabilitation of the Maritime Link during, and for its decommissioning and removal at the end of, its Service Life, subject to Applicable Law and any required Regulatory Approvals.

6.3 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 6.3**.

6.4 Engagement with Governments

The Parties agree to work constructively with the governments of Canada, NL and NS, and any other relevant governments and each of their respective Authorized Authorities, with respect to the legislative, regulatory, administrative and all other relevant aspects of the Development Activities.

6.5 Environmental Approvals

(a) Environmental Registration Document and Environmental Impact Statement for ML Project - In a timely manner following a direction from the JDC-ML to do so, Emera shall prepare and submit an environmental registration document and environmental impact statement for the ML Project to the JDC-ML for its Approval. The JDC-ML may direct such changes as it deems necessary or appropriate to the environmental registration document or environmental impact statement, provided such changes do not prevent compliance with the requirements of the applicable Authorized Authority. Once an environmental registration document or environmental impact statement is Approved by the JDC-ML, Emera shall submit the

environmental registration document or environmental impact statement to the applicable Authorized Authority for its approval.

(b) Regulatory Amendments - If an environmental impact statement Approved by the JDC-ML and submitted by Emera to the applicable Authorized Authority is required by the Authorized Authority to be materially amended prior to the Authorized Authority's final approval thereof, Emera shall forthwith, upon receipt of advice from the Authorized Authority of such requirement, give Notice thereof to Nalcor providing full particulars, together with Emera's recommendations with respect thereto which shall be brought forward to the JDC-ML for Approval prior to further action.

6.6 Other Regulatory Approvals

(a) Applications - In a timely manner following a direction from the JDC-ML to do so, Emera shall prepare and submit NS, NL and/or Federal regulatory applications (other than the NS Regulatory Application and the environmental approvals contemplated by **Section 6.5**) for the ML Project to the JDC-ML for its Approval. The JDC-ML may direct such changes as it deems necessary or appropriate to such applications, provided such changes do not prevent compliance with the requirements of the applicable Authorized Authority. If an application is Approved by the JDC-ML, Emera shall submit the application to the applicable Authorized Authority for its approval.

(b) Regulatory Amendments - If an application Approved by the JDC-ML and submitted by Emera to the applicable Authorized Authority is required by the Authorized Authority to be materially amended prior to the Authorized Authority's final approval thereof, Emera shall forthwith, upon receipt of advice from the Authorized Authority of such requirement, give Notice thereof to Nalcor providing full particulars, together with Emera's recommendations with respect thereto, which shall be brought forward to the JDC-ML for Approval prior to further action.

(c) Applications for Regulatory Approval - All Regulatory Approvals shall be applied for and be issued in the name of Emera.

6.7 Maintenance of Approvals

Emera shall use commercially reasonable efforts to maintain or cause to be maintained the Regulatory Approvals in good standing, and to comply with and fulfill the terms of the Regulatory Approvals, for the duration of the Term, including obtaining or causing to be obtained any extensions of or replacements for such Regulatory Approvals.

ARTICLE 7
PROJECT IMPLEMENTATION

7.1 Duties Regarding Project Implementation

(a) Emera's Obligations - Without limiting Emera's obligations or the Project Manager's duties and responsibilities under any other provision of this Agreement, Emera's obligations include the following:

(i) performing or causing to be performed all Development Activities required to design, engineer, procure, construct and Commission the Maritime Link in accordance with the Basis of Design and, subject to **Section 7.3**, by the dates or within the time periods specified in the Project Schedule, excluding only such Development Activities as are expressly required by this Agreement to be performed by Nalcor;

(ii) ensuring that all Development Activities are performed in compliance with AFEs, Budgets, Project Execution Plans, Work Programs, the Project Schedule and Project Policies, as necessary and appropriate for the planning, management and completion of the ML Project;

(iii) exercising its best skill and judgment, and using its best efforts, to perform its obligations under this Agreement in an efficient, expeditious and economical manner;

(iv) providing adequate, qualified, competent and suitably experienced executive, professional, managerial, supervisory and administrative personnel to perform its obligations hereunder, including professional engineers, geoscientists and architects, and procurement, project management and construction management personnel; and

(v) causing the Project Manager to carry out all of his or her obligations under this Agreement and the Project Policies.

(b) Standard of Performance - Each Party shall conduct or cause to be conducted all Development Activities for which it is responsible in compliance with the requirements of Applicable Law, and in the conduct thereof shall:

(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 project developers and operators engaged in similar activities under similar circumstances and conditions; and

(iii) comply with Good Utility Practice.

(c) JDC-ML Approvals - No Approval by the JDC-ML will relieve Emera of any of its obligations under this Agreement.

7.2 Emera as Representative

(a) Emera's Role - Unless otherwise provided in this Agreement or directed by the JDC-ML with respect to particular matters, Emera shall be the designated representative of the Parties in respect of the ML Project and for the purposes of relations with Authorized Authorities and aboriginal bodies.

(b) Attendance at Meetings - Notwithstanding **Section 7.2(a)**, Nalcor shall be entitled:

(i) to receive notice of any scheduled meetings material to the Defined Assets that Emera is having and, where deemed appropriate by the Parties, to attend in person or by electronic communication device; and

(ii) to receive from Emera a copy of all material correspondence to or from an Authorized Authority or NL aboriginal group.

(c) Notice of Meetings - Emera shall provide reasonably sufficient advance Notice to Nalcor of the occurrence of matters referred to in this **Section 7.2** to allow Nalcor to exercise its rights hereunder.

7.3 Project Milestones

(a) Achievement of Milestones - Without limiting any other obligation of Emera under this Agreement, Emera shall use commercially reasonable efforts to cause the Development Activities to be carried out so as to achieve the Project Milestones.

(b) Managing Schedule - Emera shall use commercially reasonable efforts to avoid or mitigate the impacts of any forecasted delays in achieving the Project Milestones. The JDC-ML may direct Emera to undertake avoidance and mitigation measures where it deems necessary. Emera shall promptly undertake any such measures. In addition to the obligations under **Sections 9.2** and **9.3**, all delays that result in a change to the Commercial Operation Date shall be documented and managed by Emera in a manner to support any resultant insurance claims.

(c) Emera Liability - Notwithstanding any other provision of this Agreement, Emera is not liable for the consequences of any failure to achieve the Project Milestones except when due to the gross negligence or wilful misconduct of Emera.

(d) Optimization of Schedule - Emera and Nalcor will work together to the benefit of both Parties to optimize the Project Schedule to minimize the Actual Capital Costs;

(e) Target Date for Commissioning - Without limiting **Section 7.8(b)**, Nalcor agrees to work with Emera to Commission and put in service the Maritime Link pursuant to the Project Schedule, which, as of the A&R Effective Date, is scheduled for October

2017. For greater certainty, such Commissioning shall not be subject to the prior completion and commissioning of the MFP or the LIL.

7.4 Newfoundland and Labrador - Nova Scotia Benefits Agreement

(a) General - The NL-NS Benefits Agreement describes certain industrial and employment benefits requirements for the ML Project and obligates Nalcor to ensure compliance. All such obligations shall be deemed obligations of Nalcor and Emera respectively, to the extent of their respective responsibilities pursuant to this Agreement in implementing the Development Activities, including in relation to Project Contracts entered into by each of them.

(b) Obligations of the Parties - Without limiting **Section 7.4(a)**, each Party agrees to comply with the NL-NS Benefits Agreement in its Development Activities, including adopting the following measures:

(i) Emera shall develop and implement policies, processes and procedures consistent with these principles and shall carry out procurement in a manner consistent with these principles; and

(ii) Emera shall create and maintain a database of information tracking its compliance with the NL-NS Benefits Agreement and such Emera policies, processes and procedures and shall provide a monthly report in a format and with content satisfactory to Nalcor, acting reasonably, that allows for effective monitoring of compliance with the NL-NS Benefits Agreement, as required by Nalcor.

7.5 Project Contracts

(a) General - The Maritime Link Project Team shall determine the Project Contracts necessary for the performance of the Development Activities. Generally, Project Contracts shall be entered into by Emera for Development Activities, except where otherwise agreed by the Parties where it is advantageous to both Parties that Nalcor enter into a particular Project Contract in order to realize cost savings, improve timelines, achieve technical benefits or otherwise realize the effects of synergy. In addition to the provisions of this **Article 7**, Project Contracts shall be entered into in accordance with the applicable Project Policy with respect to Project Contracts.

(b) Emera Project Contracts - Emera shall enter into and perform its obligations under the Emera Project Contracts, subject to and in accordance with the provisions of this Agreement. Except as expressly provided in this Agreement or otherwise agreed by Nalcor in writing, Nalcor shall have no duties, responsibilities, obligations or liabilities whatsoever under or in connection with any Emera Project Contract. Emera shall be solely responsible for all obligations and liabilities to the applicable Contractor under or arising out of or in connection with each and every Emera Project Contract, and shall defend, indemnify and hold harmless the Nalcor Group from and against any and all Claims arising out of or in connection with every Emera

Project Contract. Notwithstanding the foregoing provisions of this **Section 7.5(b)**, all costs incurred by Emera under or arising out of or in connection with all Emera Project Contracts (including pursuant to this **Section 7.5(b)**) shall (if otherwise eligible) constitute Actual Capital Costs, except to the extent that such costs result from the gross negligence or wilful misconduct of Emera or any of its Representatives.

(c) Nalcor Project Contracts - Nalcor shall enter into and perform its obligations under the Nalcor Project Contracts, subject to and in accordance with the provisions of this Agreement. Except as expressly provided in this Agreement or otherwise agreed by Emera in writing, Emera shall have no duties, responsibilities, obligations or liabilities whatsoever under or in connection with any Nalcor Project Contract. Nalcor shall be solely responsible for all obligations and liabilities to the applicable Contractor under or arising out of or in connection with each and every Nalcor Project Contract, and shall defend, indemnify and hold harmless the Emera Group from and against any and all Claims arising out of or in connection with every Nalcor Project Contract. Notwithstanding the foregoing provisions of this **Section 7.5(c)**, all costs incurred by Nalcor under or arising out of or in connection with all Nalcor Project Contracts (including pursuant to this **Section 7.5(c)**) shall (if otherwise eligible) constitute Actual Capital Costs, except to the extent that such costs result from the gross negligence or wilful misconduct of Nalcor or any of its Representatives.

(d) Oversight of Contractors - The Project Manager shall ensure that all Contractors and Subcontractors engaged by or under Emera to perform Development Activities have the necessary experience and expertise to perform and do perform such Development Activities with the skill, care and diligence expected of consultants and contractors experienced in work of a nature similar to such Development Activities.

7.6 Competitive Bidding

Project Contracts will be open to competitive bidding in accordance with the Project Policies, unless otherwise agreed by the Parties, but always subject to UARB requirements.

7.7 Terms and Conditions of Project Contracts

Emera shall require the Project Manager to implement, in consultation with the Project Director, an industry standard procurement policy and contracting practices to ensure Project interests are protected and best value achieved. Unless otherwise Approved by the JDC-ML, Emera shall include in all Emera Project Contracts provisions that:

(a) provide for appropriate performance security;

(b) provide for appropriate labour relations stability;

(c) require compliance with any policies established pursuant to this Agreement with respect to:

(i) the NL-NS Benefits Agreement;

(ii) personnel involved in the Development Activities;

(iii) HSE; and

(iv) quality assurance;

(d) to the extent commercially reasonable and available, require the Contractor to cause its insurance policies to cover Nalcor as an additional insured and contain a waiver of subrogation in favour of the Nalcor Group;

(e) permit assignment of the Project Contract and any Subcontracts, including all Intellectual Property Rights under or in connection with such Project Contract or Subcontract, to Nalcor or an Affiliate of Nalcor as contemplated by this Agreement;

(f) require the Contractor to grant to Emera, and to cause its Subcontractors to grant to Emera, for the purposes of the ML Project, ownership of intellectual property or licence rights sufficient to allow Emera or Nalcor to carry out Development Activities and operate the Maritime Link, and to permit Nalcor and its Representatives to receive, copy, modify, disclose and use all Project Data developed or delivered pursuant to the Project Contract in connection with Nalcor's performance of its obligations and exercise of its rights pursuant to this Agreement, including its rights to repair, rehabilitate, Redevelop and decommission the ML, and for such ancillary purposes as are necessary for interconnection of the ML with other systems;

(g) require the Contractor to maintain data and accounting records relating to Development Activities and to allow Emera and its Representatives to audit such data and records and to access the premises of the Contractor for the purposes of such audit;

(h) require the Contractor to preserve and cause its Subcontractors to preserve all documents and records pertaining to work relating to Development Activities for a period of not less than seven years after final acceptance of the work under the Project Contract or termination of this Agreement, whichever occurs first;

(i) require the Contractor to include the necessary provisions in its contracts with Subcontractors to ensure access by Emera and its Representatives to the premises of the Subcontractor and to applicable records of the Subcontractor, provided that the Parties will not be liable for any of the Contractor's or the Subcontractor's costs resulting from an audit; and

(j) permit Nalcor to attend progress meetings.

Emera shall cause its Contractors to include in all Subcontracts provisions equivalent to those described in the foregoing clauses **(a)** to **(j)** inclusive.

7.8 Commercial Operation

(a) Notice of Planned Commercial Operation Date - Emera shall provide a Notice to Nalcor no later than 180 days before the date Emera reasonably expects the Commercial Operation Date to occur. The Parties shall then cooperate to schedule a mutually agreed Commercial Operation Date on or within a period of 15 days after the date in such Notice. **Section 1.2(m)(i)** applies to this **Section 7.8(a)**.

(b) Commissioning - At the reasonable request of Emera made in writing, Nalcor shall, and shall cause its Affiliates to, use commercially reasonable efforts to cooperate with Emera and the System Operators to support the Commissioning of the Maritime Link.

(c) Notice of Commencement of Commercial Operation - As soon as practicable after the requirements for Commercial Operation, as set forth in **Section 7.8(e)**, have been satisfied, or such requirements have been waived in writing by the Parties, Emera shall deliver a written Notice to Nalcor specifying the date upon which Commercial Operation shall commence (the "**COD Notice**"), which commencement date shall occur no earlier than 30 days after the receipt by Nalcor of the COD Notice or on such other date as agreed upon by the Parties in writing (such date, the "**Commercial Operation Date**").

(d) Nalcor's Notice - Within 20 days after the receipt by Nalcor of the COD Notice, Nalcor shall deliver a certificate to Emera either (i) confirming that the requirements set forth in **Section 7.8(e)** have been satisfied or duly waived and that Commercial Operation may commence on the Commercial Operation Date, or (ii) objecting with reasonable detail to the COD Notice. Nalcor's failure to respond in writing to a COD Notice within such 20 day period shall be deemed to be a confirmation that the requirements set forth in **Section 7.8(e)** have been satisfied or duly waived.

(e) Requirements for Commercial Operation - The following requirements must be satisfied by Emera or waived by the Parties before Commercial Operation of the Maritime Link can commence:

(i) achievement of the mechanical completion by Contractors accepted by Emera with no outstanding punchlist items determined by the Project Manager and Project Director to be of a serious nature that would prevent Commissioning and operation of the Maritime Link;

(ii) Commissioning of the Maritime Link by Emera with no outstanding punchlist items determined by the Project Manager and Project Director to be of a serious nature that would prevent safe operation of the Maritime Link;

(iii) mechanical completion and Commissioning documentation and associated procedures, forms and process are to be at a standard mutually acceptable to the Project Manager and Project Director;

(iv) the Maritime Link has been constructed in accordance with the Basis of Design and is capable of operating at the Design Capacity;

(v) all necessary Facility Real Property Interests have been acquired in accordance with the Land Acquisition Plan;

(vi) all Regulatory Approvals necessary for the Commercial Operation of the Maritime Link as contemplated by the Formal Agreements have been obtained by Emera; and

(vii) all requirements of the System Operators for interconnection of the Maritime Link with the Island Interconnected System and with the bulk energy transmission system in NS have been satisfied.

7.9 Health, Safety and Environment

Recognizing that health, safety and the environment are the highest priorities of both Parties, Emera shall conduct Development Activities and otherwise manage the Project Assets in a manner that gives priority to the effective management of HSE risks, is in compliance with all Applicable Law pertaining to HSE, and is designed to avoid significant, adverse and unintended impacts on the safety or health of people, property or the environment. Emera shall develop and implement a harmonized HSE Project Policy covering all Development Activities.

7.10 Other Obligations of Emera

(a) Not Create Encumbrances - Emera shall keep the Maritime Link free and clear of any and all Encumbrances other than Permitted Encumbrances which may arise from Development 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.

(b) Notice of Certain Risks - Emera shall give Nalcor prompt Notice of:

(i) default, litigation or notices from Authorized Authorities relating to Regulatory Approvals;

(ii) any material breach or other event of default under any key Project Contracts referred to in **Section 3.4(a)(i)(H)**;

(iii) any material Claim by a third party; and

(iv) any material Claim by a Contractor or Subcontractor.

ARTICLE 8
FINANCIAL AND OTHER ARRANGEMENTS

8.1 Pre-Cost Sharing End Date Work

(a) Payment of Costs During Pre-Cost Sharing End Date Period - Each Party shall bear and be responsible for its own Pre-CSED Costs, including internal costs such as the costs of its own employees or consultants who work on the ML Project either as part of the Maritime Link Project Team or otherwise, expenses of its legal, tax, accounting, technical and other advisors, and its own Financing Costs, except that the Parties shall equally share any Third Party Costs in respect of the Maritime Link that arose prior to the Cost Sharing End Date (the "**Third Party Pre-CSED Costs**"). All Third Party Pre-CSED Costs shall be paid in the first instance by the Party contracting with the third party and shall be recorded and tracked in accordance with the Cost Accounting Protocol based on the Approved Pre-CSED AFE or Supplemental AFE.

(b) Reporting and Payment Process - Not later than the 15th day after the end of the calendar month in which the JDA Effective Date occurs, and thereafter not later than the 15th day after the end of each calendar month to and including the calendar month in which the Cost Sharing End Date occurs, each Party shall provide the other with a written statement of the Third Party Pre-CSED Costs incurred by the first Party in the immediately preceding calendar month. Within a further 15 days, Emera, after consultation with Nalcor, shall prepare and deliver to Nalcor a written report, in a format Approved by the JDC-ML, detailing the Third Party Pre-CSED Costs incurred by each Party in such immediately preceding calendar month. Each Party shall be responsible for 50% of the aggregate of such Third Party Pre-CSED Costs and the Parties shall make such appropriate payments or credits as are required to achieve this apportionment for the relevant month.

8.2 Rights and Obligations after Cost Sharing End Date

(a) Emera Responsibility for Actual Capital Costs - On and after the Cost Sharing End Date, Emera shall:

(i) be responsible for and commence making payments equal to 100% of the Actual Capital Costs; and

(ii) be responsible for all Financing Costs.

(b) Reimbursement of Nalcor Costs Incurred in the Pre-CSED Period - At the Cost Sharing End Date, Emera shall reimburse Nalcor for:

(i) 100% of Previously Incurred Costs in respect of the Maritime Link; and

(ii) 100% of Nalcor's Pre-CSED Costs in respect of the Maritime Link, less the amount reimbursed pursuant to **Section 8.1(b)**, plus interest calculated using the NSPI Cost of Capital Rate from the time such costs were incurred by

Nalcor until they are paid by Emera, excluding costs incurred by Nalcor referred to in **Section 3.8**.

(c) Reimbursement of Nalcor Post-CSED Costs - Not later than the 15th day after the end of the calendar month in which the Cost Sharing End Date occurs, and thereafter not later than the 15th day after the end of each calendar month until the end of the calendar month in which the Commercial Operation Date occurs, Nalcor shall provide Emera with a written report, in a format Approved by the JDC-ML, detailing the Nalcor Post-CSED Costs incurred by Nalcor in the immediately preceding calendar month in accordance with the then current AFE and the applicable Annual Work Program and Budget. Emera shall reimburse Nalcor for the Nalcor Post-CSED Costs detailed in such report within 30 days after receipt thereof by Emera.

(d) Application for UARB Approval of Projected Overruns - If at any time there is a Projected Overrun, Emera shall cause to be prepared, submitted and diligently prosecuted an application to the UARB for approval of recovery of the Projected Overrun and applicable AFUDC. Nalcor shall assist with the application.

(e) Apportionment of Unapproved Overrun - Subject to **Sections 3.2(e)** and **8.2(g)**, the Unapproved Overrun, if any, shall be apportioned as follows:

(i) Emera shall be responsible for the portion of the Unapproved Overrun, plus any Financing Costs applicable thereto, that does not exceed five percent of the UARB Approved Amount;

(ii) Nalcor shall be responsible for and reimburse to Emera the portion, if any, of the Unapproved Overrun, plus any Financing Costs applicable thereto, that exceeds five percent, but does not exceed 10%, of the UARB Approved Amount;

(iii) Emera shall be responsible for 50% of the portion, if any, of the Unapproved Overrun, plus any Financing Costs applicable thereto, that exceeds 10% of the UARB Approved Amount; and

(iv) Nalcor shall be responsible for and reimburse to Emera 50% of the portion, if any, of the Unapproved Overrun, plus any Financing Costs applicable thereto, that exceeds 10% of the UARB Approved Amount.

(f) Payment - Within 30 days after determination of the total Actual Capital Costs of the Maritime Link as shown in the ML Interim Cost Report prepared pursuant to Section 5.18(d) of the NLDA, Nalcor shall make such payments as are required to achieve the apportionment of the Unapproved Overrun required pursuant to **Section 8.2(e)**. Any required adjustments to such apportionment shall be made based on the ML Final Cost Report prepared pursuant to Section 5.18(h) of the NLDA.

(g) Responsibility for Unapproved Overruns - Nalcor shall not be responsible for or required to reimburse Emera for any Unapproved Overruns which arise (directly or indirectly) due to an Emera Default or which is attributable (directly or indirectly) to the gross negligence or wilful misconduct of Emera or a member of the Emera Group.

8.3 Supplemental AFEs

If at any time or times the Project Manager determines that the estimated Capital Costs of the period covered by the then current AFE exceeds the amount, or that Development Activities are required that are outside the scope, of the then current AFE, the Project Manager, in consultation with the Project Director, shall prepare a proposed amended Budget and Supplemental AFE covering the excess Capital Costs and/or additional Development Activities, and the process in **Section 5.1(b)** and **Section 5.4**, as applicable, shall apply, *mutatis mutandis*, to the amended Budget and Supplemental AFE.

8.4 Limitation on Scope of Project and Expenditures

Except as provided in **Section 8.11(a)**, neither Party shall undertake or cause to be undertaken any Development Activities or incur any Capital Costs except as authorized pursuant to and within the scope of an AFE and the related Budget. Any Capital Costs incurred by either Party without such authorization shall be for that Party's sole account and shall be excluded from the Actual Capital Costs.

8.5 Annual Work Program and Budget

(a) Emera to Submit Work Program and Budget - As soon as practicable after the Cost Sharing End Date, and for each year thereafter, no later than 90 days before the anniversary of the Cost Sharing End Date, or such other date as may be mutually agreed by the Parties, the Project Manager, in consultation with the Project Director, shall prepare and submit to the JDC-ML a proposed Work Program and Budget necessary to implement the Development Activities on the basis provided for in the then current AFE for each succeeding year of the estimated period until Commercial Operation (the "**Annual Work Program and Budget**"). The Annual Work Program and Budget for each such year shall include but not be limited to:

(i) the Project Execution Plan including activities and other work proposed to be undertaken;

(ii) details of the number and costs of employees, secondees, expatriates and contract personnel that it estimates will be required for purposes thereof, and, where practicable, specifying whether or not they are to be permanently or temporarily assigned to the ML Project;

(iii) an update of the Project Schedule;

(iv) demonstration of compliance with Applicable Law;

(v) a Procurement Outlook for the year; and

(vi) such other information as the JDC-ML may require from time to time.

The Annual Work Program and Budget shall be subject to amendment by the JDC-ML. The Annual Work Program and Budget and any amendments thereto shall at all times be consistent with and subject to the then current AFE.

(b) JDC-ML Review - The proposed Annual Work Program and Budget shall be subject to review and Approval by the JDC-ML. The JDC-ML shall meet to consider the Annual Work Program and Budget as soon as practicable and may make revisions thereto not inconsistent with the then current AFE. Unless the JDC-ML otherwise agrees, the JDC-ML shall Approve or reject the Annual Work Program and Budget within the 90 day period following its submission for approval. If no Annual Work Program and Budget is Approved by the JDC-ML within such period of time, Emera shall nonetheless be obligated to carry out those portions of the Work Program specified in the then current AFE which relates to the year so affected.

8.6 [Intentionally deleted]

8.7 [Intentionally deleted]

8.8 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 8.8(c)**:

(i) prior to the Cost Sharing End Date, Taxes payable in respect of the ML Project shall be payable by the Party on whom such Taxes are imposed by an Authorized Authority;

(ii) on and after the Cost Sharing End Date, Emera shall pay or cause to be paid all Taxes on or with respect to the ML Project which accrue or are payable on or before the Transfer Date;

(iii) after the Cost Sharing End Date, Nalcor shall pay or cause to be paid all Taxes on or with respect to the ML Project which are both accrued and payable after the Transfer Date;

(iv) [Intentionally deleted]

(v) notwithstanding **Sections 8.8(b)(i)** to **8.8(b)(iii)**, to the extent so provided in the other Formal Agreements, Nalcor or Emera, as applicable, shall pay or cause 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;

(vi) for greater certainty, if there is a conflict between the provisions of this **Section 8.8** and Section 5.7 of the Joint Operations Agreement, this **Section 8.8** shall prevail;

(vii) 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;

(viii) 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

(ix) 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 8.8(a)** and **8.8(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 8.8(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 8.8(b)**, **8.8(c)**, **8.8(e)** and **8.8(f)**, New Taxes payable in respect of the ML Project 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 ML Project shall be paid:

(A) prior to the Cost Sharing End Date, by the Party on whom such New Tax is imposed or charged by Applicable Law; and

(B) after the Cost Sharing End Date, 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 8.8(a)** but subject to **Section 8.8(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 8.8(a)** but subject to **Section 8.8(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 8.8(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 8.10** 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 8.8(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 8.8(l)**, each Party undertakes to advise the other Party, in a timely manner, of any material changes to the matters described in **Sections 8.8(l)(i)** through **8.8(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 8.8(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 8.8** 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 8.8(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 8.8(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 8.8(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 8.8(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 8.8(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 8.8**.

(r) Refundable Taxes - For greater certainty, for the purposes of this Agreement, an amount shall not be included in an amount that is cost-shared or otherwise reimbursed (including Third Party Costs) to the extent that it is a Tax that is refundable, rebateable or otherwise recoverable (including HST), provided that if an Authorized Authority denies the request of a Party to obtain a refund or rebate of, or otherwise recover, such a Tax, such Tax shall, if otherwise constituting an amount that would be cost-shared or reimbursed pursuant to this Agreement, be deemed to be an amount that is to be cost-shared or reimbursed, as the case may be, and shall be deemed to be a cost of the applicable Party incurred during the calendar month in which:

(i) all commercially reasonable avenues of appeal of such denial have been exhausted unsuccessfully; or

(ii) if there are no commercially reasonable avenues of appeal of such denial, the Authorized Authority communicates such denial.

8.9 Financing

(a) Generally - Subject to **Sections 8.2(a)(ii)** and **8.2(b)(ii)**, each Party is responsible for obtaining its own financing and for payment of the associated Financing Costs related to its funding obligations under this Agreement. Emera intends to employ project financing to provide a portion of the funds required to pay for Development Activities. Nalcor will cooperate with Emera to facilitate Emera's financing activities and for such purposes agrees to take such commercially reasonable actions as may be required.

(b) [Intentionally deleted]

(c) [Intentionally deleted]

(d) No Emera Grant of Security - Except for Permitted Encumbrances, Emera shall not create, incur, assume or permit to exist any Encumbrance whatsoever on the Maritime Link, including the Facility Real Property Interests, or any part thereof, or any interest therein.

8.10 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 8.10(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 8.10(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 8.10(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 8.10(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 8.10(b)** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 8.10(c)** and any refund of an overpayment pursuant to **Section 8.10(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 8.10** 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. For the purposes of this **Section 8.10(h)**, amounts paid prior to the JDA Effective Date will be deemed to have been paid on the JDA Effective Date. 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.

8.11 Other Provisions

(a) Extraordinary Expenditures - Notwithstanding anything in this Agreement to the contrary, Emera will at all times be authorized to incur any extraordinary expenditures arising due to an emergency, for the purpose of preserving or protecting life, health or property or the prevention of pollution or other adverse environmental impacts, but Emera shall promptly Notify the JDC-ML and provide it with copies of invoices or purchase orders, where the expenditure obligation in respect of any incident is anticipated to exceed $250,000, or other amount as the JDC-ML may determine from time to time.

(b) Disputed Costs - Any Dispute as to liability for:

(i) Third Party Pre-CSED Costs claimed by either Party from the other pursuant to **Section 8.1(b)**;

(ii) Previously Incurred Costs, Pre-CSED Costs or Nalcor Post-CSED Costs claimed by Nalcor from Emera pursuant to **Section 8.2(b)** or **8.2(c)**;

(iii) a portion of any Unapproved Overrun claimed by Emera from Nalcor pursuant to **Section 8.2(e)**;

(iv) [Intentionally deleted]

(v) [Intentionally deleted]

(vi) any amount payable pursuant to **Section 8.8(b)**; or

(vii) any amount payable pursuant to **Section 8.8(i)**,

(each a "**Cost Claim**") that cannot be resolved by consensus between the Project Manager and the Project Director, or failing consensus between them, by the JDC-ML, may be referred by either Party for resolution pursuant to the Dispute Resolution Procedure. If the Party receiving a Cost Claim fails to give a Notice of Dispute of the Cost Claim to the claiming Party within 30 days after receipt of the Cost Claim, such Cost Claim shall be deemed to have been accepted and shall be due and payable by the receiving Party.

ARTICLE 9
PROJECT SUSPENSION AND DELAYS

9.1 Suspension of ML Project

The Parties may at any time after the Cost Sharing End Date approve suspension of Development Activities for a period not to exceed 180 consecutive days. At the expiry of the suspension period, Emera shall forthwith resume Development Activities.

9.2 Delays and Notice

Emera shall promptly give Notice to Nalcor of any delay in the progress of Development Activities that may result in failure to complete the ML Project in accordance with the Project Milestones. The causes and effects of any such delay, and the steps being taken by Emera to mitigate the impact of the delay in the Project Milestones, shall be detailed in Emera's reports pursuant to **Section 4.5** and reviewed by the JDC-ML at all regular meetings. Any such delay shall be managed under the change management process detailed in the Project Policies.

9.3 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 10
INSURANCE

10.1 Insurance Program

Unless otherwise agreed by the Parties, Emera shall place or cause to be placed a program of insurance covering the ML Project and all Development Activities. Such insurance shall include the following coverages:

(a) All-risk Course of Construction (Builder's Risk), including both marine and on-shore property;

(b) Third Party Liability coverage; and

(c) other coverages as may be deemed appropriate giving due consideration to the insurable risks of the ML Project.

10.2 Limits, Deductibles and Exclusions

In each case, the insurance shall provide for limits, deductibles, exclusions and other terms and conditions as may be appropriate for the ML Project, giving due consideration to:

(a) the values at risk and the maximum loss exposures;

(b) exposures to third party liabilities;

(c) commercial availability and commercially reasonable cost of such insurance;

(d) the reasonable practices employed by similar entities and similar projects in Canada; and

(e) each Party's financial ability and desire to retain certain risks.

10.3 Other Requirements

Unless otherwise agreed by the Parties, all insurance procured pursuant to this **Article 10** shall, as applicable:

(a) be at Emera's expense and be primary, non-contributing with, and not in excess of, any other insurance available to Nalcor;

(b) provide for 30 days notice to Nalcor 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, Emera shall immediately provide Notice to Nalcor of same; and

(c) remain in full force and effect at all times during the Term.

10.4 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 10**.

10.5 Benefit of Insurance

The insurance programs and policies are for the mutual benefit of the Parties. Unless both Parties are named insureds, each policy shall include a waiver of subrogation in favour of, and shall name as additional insured, the other Party, its Affiliates as appropriate, and their respective directors, officers and employees.

10.6 Contractors

Contractors, to the extent their contracts require them to procure insurance, shall be required to comply with insurance provisions as may be required and agreed between the Parties. **Section 1.2(m)(i)** applies to this **Section 10.6**.

10.7 Evidence of Insurance

If requested by a Party, the procuring Party shall supply satisfactory evidence of insurance obtained pursuant to this **Article 10** when obtained and thereafter upon renewal of such insurance.

10.8 Placement of Required Insurance

If a Party 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 Party that failed to obtain the insurance.

10.9 Effect of Failure to Insure

Notwithstanding **Section 10.8**, 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.

ARTICLE 11
TERM AND TERMINATION

11.1 Term

The term of this Agreement (the "**Term**") commenced on the JDA Effective Date and shall terminate in accordance with **Section 11.2**.

11.2 Termination

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

(a) one year after the Commercial Operation Date;

(b) written agreement of the Parties to terminate;

(c) [Intentionally deleted]

(d) [Intentionally deleted]

(e) termination pursuant to **Section 11.3**; and

(f) termination pursuant to **Section 12.3**.

11.3 Extended Force Majeure

(a) Termination of Agreement - If:

(i) Emera has given Notice under **Section 9.3** of a Force Majeure event which prevents Emera from proceeding with all or a material portion of the Development Activities;

(ii) despite Emera complying with its obligations under **Section 9.3(c)**, there are no commercially reasonable means to rectify the consequences of such Force Majeure event within 36 months after the Force Majeure event commenced (the "**Extended Force Majeure Period**"); and

(iii) unless the Parties otherwise agree in writing, the period of Force Majeure extends for a period greater than the Extended Force Majeure Period,

then, unless the Extended Force Majeure Period is extended pursuant to **Section 11.3(b)**, either Party may elect on 60 days' Notice to the other Party to terminate this Agreement without liability to the other, except for the liabilities and obligations provided for in **Section 11.4**.

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

11.4 Effect of Termination

(a) Obligations on Termination - When this Agreement terminates:

(i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Sections 4.6** and **16.1**); 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 11.4**.

(b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:

(i) the final settlement of all accounts between the Parties;

(ii) the resolution of any issues on Project Contracts outstanding at the date of termination;

(iii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;

(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 19.13**.

ARTICLE 12
DEFAULT AND REMEDIES

12.1 Emera Events of Default

Except to the extent excused as a result of an event of Force Majeure in accordance with **Section 9.3**, 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 7.10(a)** or **8.9(d)** 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 12.1(a)**, **12.1(b)** or **12.1(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;

(g) except as permitted by **Section 9.1**, all or a material portion of the Development Activities are discontinued or cease for a single continuous period in excess of 120 days, unless contemplated by the Project Schedule or for seasonal interruptions that are customary in the usual and ordinary course of the Development Activities; and

(h) any Insolvency Event occurs with respect to Emera.

12.2 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 12.1(b)** or **12.1(c)**, 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 14**, Nalcor may recover all Losses suffered by Nalcor that are due to an Emera Default, including, for the avoidance of doubt:

(i) loss of revenues and profits arising from or associated with any loss, reduction or impairment of Nalcor's ability to transmit, or any increase in Nalcor's costs of transmitting, Energy and Capacity from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England as is contemplated in the Formal Agreements; and

(ii) 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.

Nothing in this **Section 12.2(c)** shall prevent Emera from raising, as a defence to a claim by Nalcor for Losses under this **Section 12.2(c)** a requirement to mitigate where such applies at common law.

12.3 Emera Default Under Section 12.1(g)

Upon the occurrence of an Emera Default referred to in **Section 12.1(g)**, Nalcor may, at its option, provide Notice to Emera that it intends to terminate this Agreement. On providing such Notice, Nalcor shall be entitled to exercise all rights, remedies and recourse as set forth in **Section 12.2** to recover all Losses arising from the failure of Emera to complete the Development Activities in accordance with the provisions of this Agreement. On payment to Nalcor of such Losses, this Agreement shall terminate without further liability of either Party to the other.

12.4 Nalcor Events of Default

Except to the extent excused as a result of an event of Force Majeure in accordance with **Section 9.3**, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a "**Nalcor Default**"):

(a) Nalcor fails to pay or advance any amount to be paid or advanced under this Agreement at the time and in the manner required by this Agreement, which failure is not cured within 10 days after the receipt of a demand from Emera that such amount is due and owing;

(b) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 12.4(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera;

(c) any representation or warranty made by Nalcor in this Agreement is false or misleading in any material respect;

(d) Nalcor ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertaking and assets; and

(e) any Insolvency Event occurs with respect to Nalcor.

12.5 Emera Remedies upon Nalcor Event of Default

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

(i) Emera shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and

(ii) the rights, remedies and recourse available to Emera are cumulative and may be exercised separately or in combination.

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

(b) Losses - Subject to **Article 14**, Emera may recover all Losses suffered by Emera that are due to a Nalcor Default, including, for the avoidance of doubt, any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Emera to recover any amounts owed to Emera by Nalcor under this Agreement.

12.6 Equitable Relief

Nothing in this **Article 12** 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 13
LIABILITY AND INDEMNITY

13.1 Nalcor Indemnity

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

13.2 Emera Indemnity

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

13.3 Own Property Damage

For the avoidance of doubt, it is the Parties' intent that, subject to any right a Party may have to seek compensation from a third party who caused the Loss or from insurance, each Party shall be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements on any ML Project Site, (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 Development Activities or the action or inaction of the other Party, or its Affiliates or Representatives.

13.4 Indemnification Procedure

(a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 13.1** or **13.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 13.4**.

(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 13.4** 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 13.4(h)**.

(e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

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

(g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.

(h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 13.4** 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.

13.5 Insurer Approval

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

ARTICLE 14
LIMITATION OF DAMAGES

14.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 13** and **Article 14** of this Agreement shall apply to any and all Claims.

14.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, for a decline in market capitalization, 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 ML Project, 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 ML Project, in favor of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 14.2**. For the purposes of this **Section 14.2**, lost revenues or profits in relation to the purchase or sale of Energy or Capacity shall not be considered to be consequential, incidental or indirect damages, provided however that a Party must still establish such lost revenues or profits in accordance with Applicable Law.

14.3 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.

14.4 Third Party Recoveries

Each Party shall make commercially reasonable efforts to recover from the appropriate third party Losses incurred by the Party with respect to Development Activities caused by the third party's breach of contract, negligence or other fault, and shall credit any recoveries of such Losses against the Capital Costs incurred by such Party.

14.5 Exercise of CEO Override

The remedy provided in **Section 3.2(e)** shall be the sole and exclusive remedy of Emera for a Nalcor CEO Decision not made in compliance with the Decision Guidelines.

14.6 No Breakage or Other Similar Financing Costs Permitted

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

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1 Nalcor Representations and Warranties

Nalcor represents and warrants to Emera that, as of the A&R 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 A&R 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 A&R Effective Date, (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.

15.2 <u>Emera Representations and Warranties</u>

Emera represents and warrants to Nalcor that, as of the A&R 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 A&R Effective Date, (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 16
CONFIDENTIALITY AND INTELLECTUAL PROPERTY

16.1 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 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.

(b) 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 JDA Effective Date.

16.2 Intellectual Property

(a) Rights Created by or for Emera - Subject to the Joint Intellectual Property rights referred to in **Section 16.2(c)**, Emera shall be the first owner of all Emera Foreground IP.

(b) Rights Created by or for Nalcor - Subject to the Joint Intellectual Property rights referred to in **Section 16.2(c)**, Nalcor shall be the first owner of all Nalcor Foreground IP.

(c) Jointly Funded Development - All right, title and interest in and to all Intellectual Property Rights the development costs of which are Third Party Pre-CSED Costs shall be jointly owned by Nalcor and Emera, unless the contracts with the applicable third

parties provide otherwise (the "**Joint Intellectual Property**"), and may be used by each Party and its Affiliates for such Party's and its Affiliates' own business purposes without any obligation to account to the other Party. If any Joint Intellectual Property is considered by either Party to be patentable, that Party may at its own expense seek letters patent for such Intellectual Property Rights in any jurisdiction, provided that the other Party:

(i) agrees, acting reasonably, that the subject Intellectual Property Rights would be afforded greater protection as a patented invention than as a trade-secret;

(ii) is named as a co-owner or co-assignee (as the case may be); and

(iii) is meaningfully consulted with respect to the scope of the protection.

Each Party shall reasonably cooperate with the other in seeking such patent protection.

(d) Assignment to Emera of Nalcor IP and Nalcor Interest in Joint Intellectual Property - Effective and conditional upon payment therefor by Emera as provided in **Section 8.2(b)** or **Section 8.2(c)**, as the case may be, Nalcor hereby assigns to Emera, free and clear of all Encumbrances, other than the licences and restrictions granted and continuing pursuant to this **Article 16**, all of its right, title and interest in (i) Nalcor's interest in the Joint Intellectual Property, (ii) the Nalcor Foreground IP created prior to the Cost Sharing End Date, and (iii) the Nalcor Foreground IP created after the Cost Sharing End Date and before the Transfer Date.

(e) ML Owned IP Held in Trust - Each of Emera and Nalcor shall hold the ML 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 ML Owned IP to any third party except in accordance with **Section 16.4(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 ML 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 the Development Activities 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, as defined in the Joint Operations Agreement, 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 ML Owned IP and any of the Granting Party's Background IP necessary for the Licensing Party to exercise this licence to the ML 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 ML Owned IP and any of the Granting Party's Background IP necessary for the exercise of the sublicensed right to the ML Owned IP as the Parties may agree in accordance with **Section 16.4(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 assignment in **Section 16.2(d)** shall be subject to the foregoing licences in **Section 16.2(f)**. Subject to **Section 16.4(c)**, the licences in **Section 16.2(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 Transfer Date.

(h) Protection of ML Owned IP - While it owns the ML Owned IP, Emera shall, at its own cost and expense, take all commercially reasonable steps to preserve and protect the value of the ML Owned IP, 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 the ML Owned IP. Emera may not file for patent protection or otherwise disclose the ML 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 of the ML Owned IP, Nalcor shall have the right, at its cost and expense, to seek patent protection for such ML Owned IP in Emera's name using counsel of Nalcor's choice.

(i) Pursuit of Applications - 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.

(j) Notice of Infringement - Each Party shall Notify the other Party if it becomes aware of any infringement or possible infringement of any of the ML Owned IP by a third party. Neither Party is under any obligation to enforce any of the ML Owned IP against third parties. Each Party shall have the right to bring a Claim for

infringement of any of the ML Owned IP by a third party in the name of the Party which owns the ML 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 ML Owned IP without the consent of the other Party.

(k) Assignment of ML Owned IP to Nalcor on Transfer Date - Effective on and conditional upon the occurrence of the Transfer Date:

(i) Emera hereby assigns all of its right, title and interest in the ML Owned IP to Nalcor, free and clear of all Encumbrances; and

(ii) Nalcor hereby grants to Emera a licence to Use all of the ML Owned IP so transferred to Nalcor for the same duration and on the same basis as the licences granted in **Section 16.2(f)**.

16.3 Intellectual Property Rights Licensed for the Transmission Assets

(a) Cooperation in Procurement - In acquiring Third Party IP Rights, the Parties shall work together to determine whether similar rights are required in connection with the Maritime Link, the Labrador-Island Link and the Labrador Transmission Assets, and the Parties shall work in good faith, each at its own cost and expense, to secure sufficient rights for all of the Transmission Assets, as applicable.

(b) Third Party IP Rights - 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:

(i) the other Party to Use such Third Party IP Rights for the purposes of that other Party's obligations under this Agreement; and

(ii) any Contractor or Subcontractor of either Party to Use such Third Party IP Rights for purposes contemplated by this Agreement.

16.4 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 16.2(d)** be owned by Nalcor, and shall be available for transfer to Emera as contemplated by **Section 16.2(d)**; and

(ii) Nalcor has the rights to grant the assignments and licences contemplated by this **Article 16**.

(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 and all Nalcor Foreground IP assigned to Emera shall at all times prior to the Transfer Date be owned by Emera, and shall be available for transfer to Nalcor on the Transfer Date as contemplated by **Section 16.2(k)**; and

(ii) Emera has the rights to grant the assignments and licences contemplated by this **Article 16**.

(c) Commercialization and Reporting of Licensing Revenue - This **Section 16.4(c)** shall apply to all licences granted by owners to third parties of the ML Owned IP held in trust pursuant to **Section 16.2(e)** and to all sublicences granted by a Licensing Party to third parties pursuant to **Section 16.2(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 ML Owned IP, and which consent may be arbitrarily withheld in respect of the Non-Commercializing Party's Background IP;

(ii) licenses purported to be granted by a Commercializing Party without the requisite consent in **Section 16.4(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) ML Owned IP and any Background IP which has achieved Commercialization prior to the Transfer Date, the rights and obligations in **Sections 16.2(e)**, **16.2(g)**, **16.2(h)**, **16.2(i)** and **16.2(j)** and this **Section 16.4(c)**, and the right to grant sublicences in **Section 16.2(f)(iii)**, shall survive this Agreement and

shall continue until they terminate on the IP Commercialization End Date; and

(v) ML Owned IP or Background IP which has not achieved Commercialization prior to the Transfer Date, the rights and obligations in **Sections 16.2(e)**, **16.2(g)**, **16.2(h)**, **16.2(i)** and **16.2(j)** and this **Section 16.4(c)**, and the right to grant sublicences in **Section 16.2(f)(iii)**, shall terminate on the Transfer Date.

For greater certainly, 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 ML 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 16**. 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 Project Data developed or created in the course of performing the Development Activities, which relates to the Development 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 16**, 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, the non-disclosure provisions of which may prevent the exploitation of Intellectual Property Rights if doing so would result in the disclosure of Confidential Information.

ARTICLE 17
ASSIGNMENT AND CHANGE OF CONTROL

17.1 Nalcor Assignment Rights

(a) General - Nalcor shall not be entitled to assign all or any portion of its interest in the Development Activities, this Agreement, a Nalcor Project Contract, 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 4**.

(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 17.1(a)**, which consent may be arbitrarily withheld.

(d) Non-Permitted Assignment - Any assignment in contravention of this **Section 17.1** will be null and void.

17.2 Emera Assignment Rights

(a) General - Emera shall not be entitled to assign all or any portion of its interest in the Development Activities, this Agreement, an Emera Project Contract, 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 4**.

(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 17.2(a)**, which consent may be arbitrarily withheld.

(d) Non-Permitted Assignment - Any assignment in contravention of this **Section 17.2** will be null and void.

17.3 [Intentionally deleted]

17.4 Interests Held in Trust

To the extent, if any, not transferred on the Transfer Date, the Facility Real Property Interests in NS and in the seabed of the Cabot Strait shall be held in trust by Emera or an Emera Affiliate for the benefit of Nalcor and its Affiliates from the Transfer Date until such time as such Facility Real Property Interests can be transferred to Nalcor or a Nalcor Affiliate.

17.5 Nalcor Option

If any of the assets or arrangements contemplated by the Formal Agreements held by Emera or any Affiliate of Emera become beneficially owned or beneficially Controlled by any government or government-Controlled electrical utility competitor of Nalcor, Nalcor shall have the option to acquire ownership of the Maritime Link. If Nalcor gives Notice to Emera of Nalcor's exercise of such option, the Parties shall negotiate and enter into an agreement containing the terms and conditions upon which the Maritime Link shall be transferred to Nalcor. **Section 1.2(m)(i)** applies to this **Section 17.5**.

ARTICLE 18
DISPUTE RESOLUTION

18.1 General

(a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 5** (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 18**, without prejudice to either Party's rights pursuant to this Agreement.

18.2 Procedure for Inter-Party Claims

(a) Notice of Claims - Subject to and without restricting the effect of any specific Notice requirement in this Agreement, a Party (the "**Claiming Party**") intending to assert a Claim against the other Party (the "**Recipient Party**") shall give the Recipient Party prompt Notice of the Claim, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the Losses that have been or may be sustained by the Claiming Party. The Claiming Party's failure to promptly Notify the Recipient Party shall not relieve the Recipient Party of its obligations hereunder, except to the extent that the Recipient Party is actually and materially prejudiced by the failure to so Notify promptly.

(b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied

upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If both Parties agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

(c) Disputed Invoices - This **Section 18.2** does not apply to Disputes relating to invoices pursuant to **Section 8.10**, which shall be governed by **Section 8.10(e)**.

ARTICLE 19
MISCELLANEOUS PROVISIONS

19.1 Notices

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

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Vice President, Lower Churchill Project
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:

NSP 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.

19.2 Prior Agreements

Except for the Assignment of Maritime Link - Joint Development Agreement dated January 28, 2013 among Emera, NSPML and Nalcor, 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, the Sanction Agreement and, subject to **Section 1.6**, the Original ML-JDA). 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.

19.3 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.

19.4 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.

19.5 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.

19.6 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 ML Project 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.

19.7 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.

19.8 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.

19.9 Time of the Essence

Time shall be of the essence.

19.10 Amendments

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

19.11 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.

19.12 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.

19.13 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.

19.14 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.

19.15 Successors and Assigns

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

19.16 Capacity of Nalcor

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

[Remainder of this page intentionally left blank.]

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

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

NALCOR ENERGY

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

_____
Name: James Meaney

By: _____
Name: Rob Hull
Title: General Manager, Finance

We have authority to bind the corporation.

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

EMERA INC.

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

_____
Name: Rene Gallant

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

We have authority to bind the company.

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

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

NALCOR ENERGY

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

_____
Name: James Meaney

By: _____
Name: Rob Hull
Title: General Manager, Finance

We have authority to bind the corporation.

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

EMERA INC.

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

_____
Name: Rene Gallant

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

We have authority to bind the company.

MARITIME LINK - JOINT DEVELOPMENT AGREEMENT

SCHEDULE 1

MARITIME LINK - BASIS OF DESIGN

MARITIME LINK - BASIS OF DESIGN

Introduction

The Maritime Link shall be comprised of the components described in this Schedule, including the Appendices hereto, and shall be designed, engineered and constructed in accordance with the specifications set out below, all of which are subject to such changes as may be made from time to time pursuant to the Agreement.

Maritime Link - Basis of Design

Part A - Land Based Assets

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Appendices:

Appendix A - Line Routing
Appendix B - Structure Drawings
Appendix C - Station Layouts
Appendix D - Single Lines

SECTION 1 - INTRODUCTION

1.1 Background

The Maritime Link project was launched in 2011 following partnership discussions between Emera and Nalcor and the Provinces of Nova Scotia and Newfoundland and Labrador. The scope of the project includes the design, construction and commissioning of the Maritime Link with the appropriate Environmental, Regulatory, Aboriginal and other Stakeholders support and appropriate approvals. The objective of the project schedule is to commission the system in preparation for turnover and start up in 04/2017.

1.2 Document Purpose

The purpose of the document is to document the Project Scope for the land based assets as part Maritime Link (ML) Project.

This document primarily reflects Phase 3 activities to document the Basis of Design to meet the requirements of Decision Gate 3 (DG3).

1.3 Scope / Requirements

The scope/requirements of this deliverable is to describe the main Land Based components of the Maritime Link Project.

1.4 Out of Scope

The following are outside the scope of this document:

- The Muskrat Falls (MF) with the Labrador Transmission Assets
- The Labrador Island Link (LIL)
- The Newfoundland System Upgrades outside of Granite Canal
- Modifications to the NSPI transmission System outside Woodbine Substation
- The upgrades to the NSPI Special Protection systems
- The Marine based assets of the of the Maritime Link project as described in MLP-EM-RPT-0004.

1.5 Acceptance Process

This deliverable will be subject to the review and approval by only those names listed on the cover page title block and the authorization page as required.

SECTION 2 - INITIAL BASIS OF DESIGN

The Maritime Link shall be comprised of the components described in this Section and shall be designed, engineered and constructed in accordance with the specifications set out below for a minimum of 50 year asset life.

2.1 103NL: Granite Canal Switchyard

- The Switchyard will be configured as a four breaker ring, energized at 230kV.
- A new switchyard will be constructed just southwest of the existing Granite Canal Terminal Station.
- The new switchyard will provide terminations for the existing TL 263 transmission line, the new 230kV line (T23001) to Bottom Brook, the Granite Canal Hydro Station, and a 15Mvar Shunt Reactor for voltage support.
- The installation will include all concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- A control building will house control, protection, monitoring, and communication equipment for the new site.
- The control building will be connected to the existing Granite Canal Hydro station via control cable and communication trench.
- The station will be grounded in accordance with IEEE Standards.
- The station service will be supplied off the incoming transmission line.
- A preliminary station layout drawing can be found in Appendix C – Station Layouts.
- A station one line can be found in Appendix D – Single Lines.

2.2 T23001: HVac Overhead Transmission – Granite Canal to Bottom Brook

- A 230kV HVac overhead transmission line will be constructed to connect the Granite Canal Switch yard to Bottom Brook Switch Yard.
- The line will be built using the NLH 230kV standard H-Frame structure, with Drake (795 ACSR) conductor. See Appendix B – Structure Drawing.
- The Transmission Line will be equipped with two lightning shielding wires.
    - One of the lightning shielding wires will have fibre optic cable integrated into it to provide communications between Granite Canal and Bottom Brook.
- The line will be sufficiently grounded to achieve a footing resistance of 25 ohms. Continuous counterpoise will be installed.

- The line structures will be wood pole construction with steel cross arms and cross braces. Deadends and angles will be 3 pole structures with self-supporting steel lattice towers used for major crossings.

2.3 101NL: Bottom Brook Switchyard

- The yard will be configured as a four ring, 12 breaker, breaker and a half 230kV switchyard used to replace the existing 230kV portion of the Bottom Brook Terminal station, with the additional connections:
    - Connections for the new 230kV line from Granite Canal.
    - Two 230kV connections for the new Bottom Brook Converter Station via rigid bus.
- Design will be NERC standard compliant.
- The Switchyard will be situated just to the east of the existing Bottom Brook Terminal Station in a separately fenced site.
- The installation will include all concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- A separate control building will house control, protection, and monitoring and communication equipment for the new site.
- This site will be connected to both the existing Bottom Brook terminal station as well as the new Bottom Brook converter station via control cable trenches.
- This site will be built with complete protection and control redundancy and separation.
- The station services will be supplied off existing transformers located in the current Bottom Brook Terminal Station.
- The station will be grounded in accordance with IEEE Standards.
- A preliminary station layout drawing can be found in Appendix C – Station Layouts.
- A station one line can be found in Appendix D – Single Lines,

2.4 301NL: Bottom Brook Converter Station

- 500 MW, ±200 kV asymmetrical bi-pole, voltage sourced commutation (VSC) Converter Station capable of operating in mono-pole mode at 250 MW continuous operations, in either direction.
- Situated east of the Bottom Brook Terminal Station in a separately fenced site,
- Installation includes all concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.

- The converter building will house the AC/DC converter valves, control systems, low voltage switchgear, cooling systems, spare parts storage and modest amenities and maintenance facilities.
- The DC yard will have the switching capability to use the out of service pole as a metallic return for mono-pole operation.
- The station services will be supplied off existing transformers located in the current Bottom Brook Terminal Station.
- Switching, control, protection, monitoring and communication equipment installed to specification of final design.
- Integration into a special protection system that will communicate with the converter station located at Soldiers Pond as part of the LIL project.
- A preliminary station layout drawing can be found in Appendix C – Station Layouts
- The line route can be found in Appendix A – Line Routing.

2.5 E00502: Grounding Line – Bottom Brook to Indian Head

- A 35 km grounding line, with two current carrying conductors, will join the Bottom Brook Converter Station to the Indian Head near-shore grounding site.
- The grounding line will be built with twin Goldenrod (954 ACSR) conductor.
- The line will be primarily wood pole construction, with the use of steel structures at major crossings, See Appendix B – Structure Drawing.
- The grounding line will have lightning arrestors installed every 500 meters.
- The line route can be found in Appendix A – Line Routing.

2.6 901NL: Indian Head Grounding Site

- A near shore grounding site will be located off Indian Head in St George's Bay on the west coast of Newfoundland near Stephenville Crossing.
- The grounding site will be designed with sufficient size and capacity to limit the voltage gradient from increasing beyond 1.25V/m during a mono-pole operation.
- The station services will be supplied by existing local distribution lines (if required).
- The grounding site will be designed to be capable of supporting continuous monopole ground current return (1250A).
- The line route can be found in Appendix A – Line Routing.

2.7 X20005 & X20006: HVdc Overhead Transmission – Bottom Brook to Cape Ray

- A HVdc overhead transmission line, ±200 kV, will be constructed to connect the Bottom Brook Converter Station to the Cape Ray Transition Compound.
- The transmission line will be built to carry both poles, each one being comprised of a single Bluebird (2156 ACSR) conductor.
- The transmission line will be equipped with two lightning shielding wires.
    - One of the lightning shielding wires will have fibre optic cable integrated into it to provide communications between Cape Ray and Bottom Brook.
- The line will be sufficiently grounded to achieve a footing resistance of 25 ohms with counterpoise installed if required.
- Each conductor will be able to sustain 250 MW continuously, with a combined capacity of 500MW.
- Towers are to be galvanized lattice steel, self-supported angles and deadends, and guyed tangent towers. See Appendix B – Structure Drawings.
- The line route can be found in Appendix A – Line Routing.

2.8 701NL: Cape Ray Transition Compound

- The Cape Ray transition compound will be an open-air transition from underground to overhead conductor contained within a fenced site.
- Installation will include the concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- A steel lattice dead end structure will be installed within the fenced compound for the transmission conductor connection.
- Switching, control, protection, monitoring and communication equipment will be installed in a new control building.
- The station services will be supplied by existing distribution lines.
- The station will be grounded in accordance with IEEE Standards
- A station layout drawing can be found in Appendix C – Station Layouts

2.9 701NS: Point Aconi Transition Compound

- The Point Aconi transition compound will be an open-air transition from underground to overhead conductor contained within a fenced site.
- Installation will include the concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- A steel lattice dead end structure will be installed within the fenced compound for the transmission conductor connection.

- Switching, control, protection, monitoring and communication equipment will be installed in a new control building.
- The station services will be supplied by existing distribution lines.
- The station will be grounded in accordance with IEEE Standards
- A station layout drawing can be found in Appendix C – Station Layouts

2.10 X20001 & X20002: HVdc Overhead Transmission – Point Aconi to Woodbine

- A 41 +/- 200kV HVdc overhead transmission line will be constructed to connect the Point Aconi Transition Compound to the Woodbine Transition Compound.
- The transmission line will be built to carry both poles, each one being comprised of a single Bluebird (2156 ACSR) conductor.
- The transmission line will be equipped with two lightning shielding wires.
    - One of the lightning shielding wires will have fibre optic cable integrated into it to provide communications between Point Aconi and Woodbine.
- The line will be sufficiently grounded to achieve a footing resistance of 25 ohms with counterpoise installed if required.
- Each conductor will be able to sustain 250 MW continuously, with a combined capacity of 500MW.
- Towers are to be galvanized lattice steel, self-supported angles, deadends, and guyed tangent towers. Free standing tangent structures will be used in some sections where required by right of way constraints. See Appendix B – Structure Drawings
- The line route can be found in Appendix A – Line Routing.

2.11 702NS: Woodbine Transition Compound

- This facility will be needed to facilitate connection of the DC line into the converter station at Woodbine to reduce the number of overhead transmission line crossings of the DC line.
- The Woodbine transition compound will consist of an open-air cable transition within a fenced site with provision for the underground cable entrance and other associated primary equipment. Installation will include the concrete foundations and steel structures to support the electrical equipment and switchgear.
- The overhead HVdc line will terminate on a steel line termination structure,
- Connection from this facility to nearby Converter Station will be via underground primary cable, control cable and communications cable.
- Switching, control, protection, monitoring and communication equipment shall be incorporated into nearby Converter Station,

- The station will contain a visual barrier to hide the terminators from view.
- A preliminary station layout drawing can be found in Appendix C – Station Layouts.

2.12 301NS: Woodbine Converter Station

- 500 MW, ±200 kV asymmetrical bi-pole, VSC Converter Station capable of operating in mono-pole mode at 250 MW continuous operations, in either direction.
- The Woodbine Converter Station will be situated west of the Woodbine Substation in a separately fenced site.
- Installation will include concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- The converter building will house the AC/DC converter valves, control systems, low voltage switchgear, cooling systems, spare parts storage and modest amenities and maintenance facilities.
- The DC yard will have the switching capability to use the out of service pole as a metallic return for mono-pole operation.
- The station services will be supplied off the transformers located at the Woodbine substation.
- Switching, control, protection, monitoring and communication equipment installed as required.
- A preliminary station layout drawing can be found in Appendix C – Station Layouts.

2.13 E00501: Grounding Line – Woodbine to Big Lorraine

- A 48 km grounding line carrying two current carrying conductors will join the Woodbine Converter Station to the Big Lorraine near shore grounding site.
- The grounding line will be built with twin Goldenrod (954 ACSR) conductor.
- The line will be primarily wood pole construction, with the use of steel structures at major crossings.
- The grounding line will have lightning arrestors installed every 500 meters.
- The line route can be found in Appendix A – Line Routing

2.14 901NS: Big Lorraine Grounding Site

- A near shore grounding site will be located at the mouth of Big Lorraine Harbour on the east coast of Cape Breton.

- The grounding site will be designed with sufficient size and capacity to limit the voltage gradient from increasing beyond 1.25V/m during a mono-pole operation.
- The station services will be supplied by existing local distribution lines (if required).
- The grounding site will be designed to be capable of supporting continuous monopole ground current return (1250A).

2.15 101S: Woodbine Substation Expansion

- The Woodbine 345kV substation will be expanded to a 4 breaker, two ring, breaker and a half scheme.
- The Woodbine 230kV substation will be expanded to a 9 breaker, three ring, breaker and a half scheme.
- The yard will be expanded to incorporate the following additional connections:
    - L7012 and L7011 will be turned into the station and connect into the new 230kV bus.
    - Two 345kV connections for the new Woodbine Converter Station.
    - A new Transformer 345kV/230kV/26.4kV, GrdWye/GrdWye/Delta, 340/453.3/566.7 MVA.
- Installation will include concrete foundations and galvanized steel structures to support the electrical equipment and switchgear.
- Control, protection, monitoring and communication equipment for the A scheme will be installed in the existing control building. B scheme will be in the new building.
- This site will be connected to the new Woodbine converter station via control cable trenches.
- This site will be built with protection, control and communication redundancy.
- A preliminary station layout drawing can be found in Appendix C – Station Layouts
- A station one line can be found in Appendix D – Single Lines

2.16 Maritime Link Telecommunication Systems

- Permanent control, teleprotection, SCADA and voice circuits will be designed to NERC equivalent standards.
- The system will be comprised of a combination of the NSPI infrastructure, NLH infrastructure, newly installed infrastructure and utilizing the government of Newfoundland (GNL) fibre network that connects Newfoundland to Nova Scotia via underwater fibres.

- This system will be built with complete redundancy and separation (Primary and Secondary Paths)
- Primary Path
    - A fibre line of approximately 1 km will be constructed along Grand Narrows Hwy and spliced into the existing GNL fibre assets connecting Woodbine to Newfoundland via the sub-sea cable that comes ashore at Port Aux Basque.
    - The communication link between Port Aux Basque and Cape Ray will utilize existing GNL fibre asset.
    - A fibre line of approximately 1 km will be installed on existing NLP poles from the GNL fibre assets in Cape Ray to the Cape Ray Transition Compound.
    - An Optical Ground Wire (OPGW) will be installed with the HVdc line which will provide a communication medium between the Cape Ray Transition Compound and the Bottom Brook Converter Station.
    - An OPGW will be installed with the HVac line which will provide a communication medium between the Bottom Brook Switchyard and the Granite Canal Switchyard.
    - From Granite Canal the telecommunications from the new Switch yard 103NL will connect into the existing NLH microwave communication systems at Granite Canal Hydro station, which is currently connected back to the ECC at St. John's
- Secondary Path
    - A fibre line of approximately 8 km will be installed on existing NSPI poles connecting Lingan Power Plant with GNL fibre assets on New Waterford Hwy.
    - A fibre line of approximately 15 km will be constructed adjacent to existing NLP and NLH transmission lines, connecting the GNL fibre assets near Port-aux-Basques to the GNL fibre assets near Cape Ray.
    - The communication link into Bottom Brook will utilize the ADSS of the grounding line in Newfoundland. The connection point for this will be the intersection of the grounding line with GNL fibre assets.
    - A fibre line less than 1 km in length will be installed on existing NLP poles, connecting the GNL fibre assets near Deer Lake to the Deer Lake Terminal Station.
    - A fibre line less than 4 km in length will be installed on existing NIP poles connecting the GNL fibre assets near Stony Brook to the Stony Brook Terminal Station.

- The communication path will splice into the LIL telecommunication system from Stony Brook to the ECC at St. John's.

Additional upgrades in NL will be included within the scope of the ML budget and have been separately identified and will be under the management of NLH and Nalcor (NLH System Upgrades).

The final plan and designs of telecommunications between ML, LIL and both NS and NI Energy Control Centers will require further development and study to determine the exact specifications and ensure optimal system design.

SECTION 3 - SYSTEM RATINGS

The following are equipment ratings that will be used to build the infrastructure required for the Maritime Link Project. Wind and ice loading shall meet CSA 50 year loads as a minimum. CSA severe load cases were added for checks and are not the governing factors.

Table 3.1 – Transmission Line Environmental Design Characteristics

Weather Condition	Radial Ice	Wind Pa	Temp °C	Remarks
CSA Severe	19	400	-20	Ice density = 900 kg/m^3
High wind (CSA)	-	800 (120 km/h)	-20	CSA 60826:06 Fig. CA1
High wind	-	1725 (176 km/h)	2	Wind speed is based on an hourly average at 10 m above ground level.
High wind (Wreck-house area only for the HVdc line in Newfoundland)	-	2225 (200 km/h)	2	
Heavy ice (CSA)	50	-	-20	CSA 60826:06 Fig. CA2 and spatial factor of 1.5.
Wind+Ice	25	515 (96 km/h)	2	Wind speed is based on an hourly average at 10 m above ground level.
10% winter design temp. (WD initial)	-	-	-40	
10% winter design temp. (WD final)	-	-	-40	
Mean annual temp. / Everyday condition	-	-	2	
Maximum ambient temperature (summer)	-	(0.6 m/s)	40	Solar absorption coefficient=0.8; emissivity=0.6
Maximum ambient temperature(winter)	-	-	0	
Unbalanced ice load	32 mm	-	-20	34 mm ice for shield-wire

Weather Condition	Radial Ice	Wind Pa	Temp °C	Remarks
Construction	-	43	-30	
Broken conductors-1	19	400	-20	Only for dead-end
Broken conductors-2	50	-	-20	Only for dead-end
Broken conductors-3		-	0	
Air-gap (Steady state condition)	See HVdc studies. Clearance will be maintained for an insulator swing of 60°.			
Air-gap (Switching surge)	See HVdc studies. Switching Surge clearance will be maintained for an insulator swing of 20°.			
Phase spacing	-	-	15	Table-17 of CSA
R.O.W edge distance	-	230	40	Clause 5.2.7 of CSA
Galloping check	19	100	0	

Table 3.2 – Transmission Line Electrical Design Characteristics

Line Electrical Characteristics	
+/- 200 kV HVdc Line	
Nominal line voltage	+/- 200 kV dc
Rated capacity per pole	250 MW
Rated current	1250 A
Maximum 10 operating voltage	+/- 220 kV HVdc (5% overvoltage)
Switching surge overvoltage	+/- 352 kV dc
Required project life	50 years
230 kV AC Line	
Nominal line voltage	230 kV
Line current	954 A
Line thermal capacity	380 MVA
Maximum operating voltage	260 kV
Switching surge factor	2.75
Switching surge overvoltage	583 kV
Basic Impulse Level (BIL)	1050kV
Required project life	50 years

Table 3.3 – Station Environmental Design Characteristics

Station Electrical Characteristics	
230kV Stations	
Nominal system voltage	230 kV
Maximum nominal voltage	253 kV
Nominal bus current capacity	2000 A
Nominal line exit current capacity	1200 A
Switching surge factor	2.7
Basic Impulse level (BIL)	1050 kV (NL) / 950kV (NS)
Nominal initial fault current capacity	5 kA
Ultimate fault current capacity	31.5 kA
SLG fault current	31.5 kA
Altitude	290 m asl
Minimum insulation creepage	25 mm/kV
Maximum temperature	+40 °C
Minimum temperature	-40 °C*
Flexible Jumpers twin	1272 ASC (Narcissus)
Current carrying capacity at 80°C	2050 A
Tubular bus	4 in IPS schedule 40 Al tube
Current carrying capacity	>2000 A (design based on mechanical strength)
Minimum grade clearance	6.4 meters
Minimum vertical clearance	3.05 meters (tubular bus)
Minimum phase spacing, tubular bus	(stations) 4.0 meters
Tubular bus fitted with conductor dampers	Yes
Bus supports	station post porcelain insulators
Insulator BIL	1050 kV (NL)/ 950kV (NS)
Bus Insulator electro-mechanical strength	Min. 1250 lbs Cantilever, TR316
Bus insulator leakage distance	25 mm/kV minimum
345kV Stations	

Station Electrical Characteristics	
Tubular bus	4 in IPS schedule 40 Al tube
Current carrying capacity	>2000 A (design based on mechanical strength)
Minimum grade clearance	6.5 meters
Minimum vertical clearance	3.4 meters (tubular bus)
Minimum phase spacing stations to converter	5.0 meters
Tubular bus fitted with conductor dampers	Yes
Bus supports	station post porcelain insulators
Insulator BIL	1300 kV
Bus Insulator electro-mechanical strength	Min. 1450 lbs Cantilever, TR367
Bus insulator leakage distance	25 mm/kV minimum

* -35°C for Woodbine and Bottom Brook

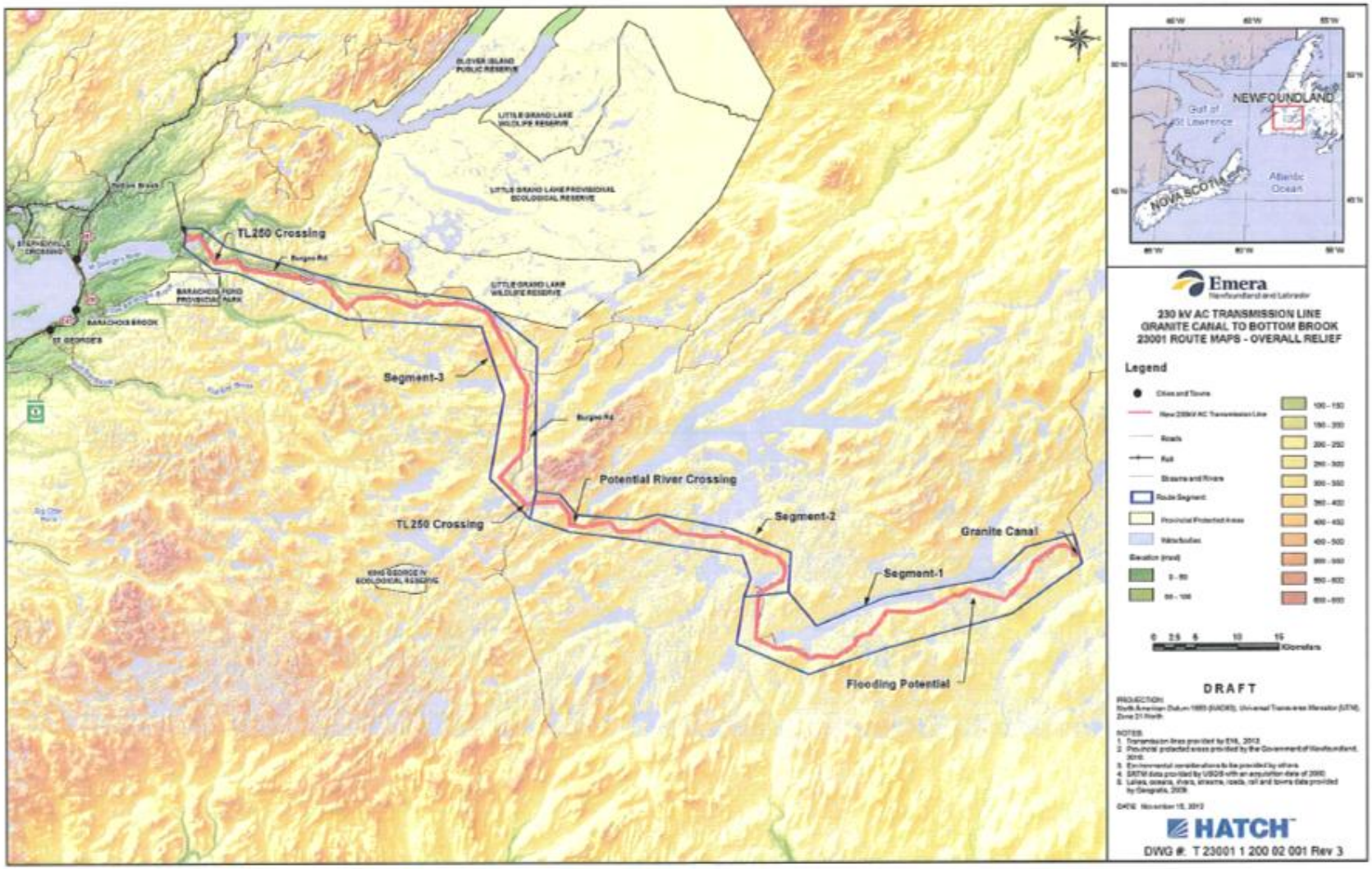
Table 3.4 – Station Electrical Design Characteristics

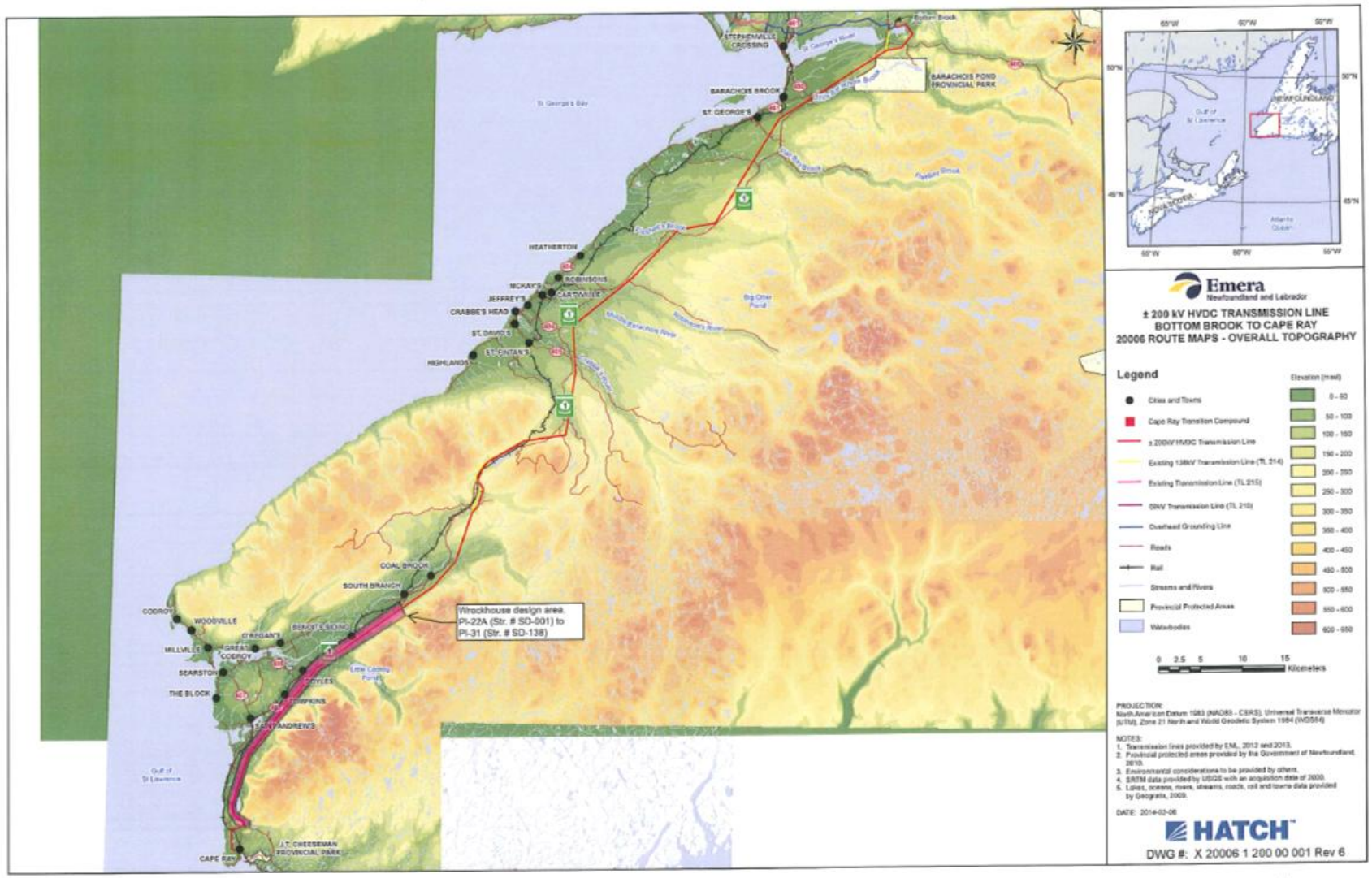
Station Environmental Design Characteristics	
Maximum One Day Rain (1/50)	107 mm
Annual rain	850 mm
Total equivalent annual precipitation	1125 mm
Mean annual maximum snow depth	1.3 m (CSA C22.3, Table D.1)
1/50 year snow load (Ss)	4.7 kPa
1/50 year snow load (Sr)	0.6 kPa
Driving rain wind pressure, 1/5 year	0.02 kPa
Hourly wind pressure, 1/10 year	0.47 kPa
Hourly wind pressure, 1/50 year	0.60 kPa
Ice accumulation	50 mm
Isokeraunic Level	10
1% minimum January Temperature	-27 °C
2.5% maximum July Temperature (dry)	27 °C
Seismic	**Data**
Sa(0.2)	0.13

Station Environmental Design Characteristics	
Sa(0.5)	0.09
Sa(1.0)	0.058
Sa(2.0)	0.02
Peak ground acceleration (g)	0.044

Appendix A
to Maritime Link - Basis of Design
Part A - Land Based Assets

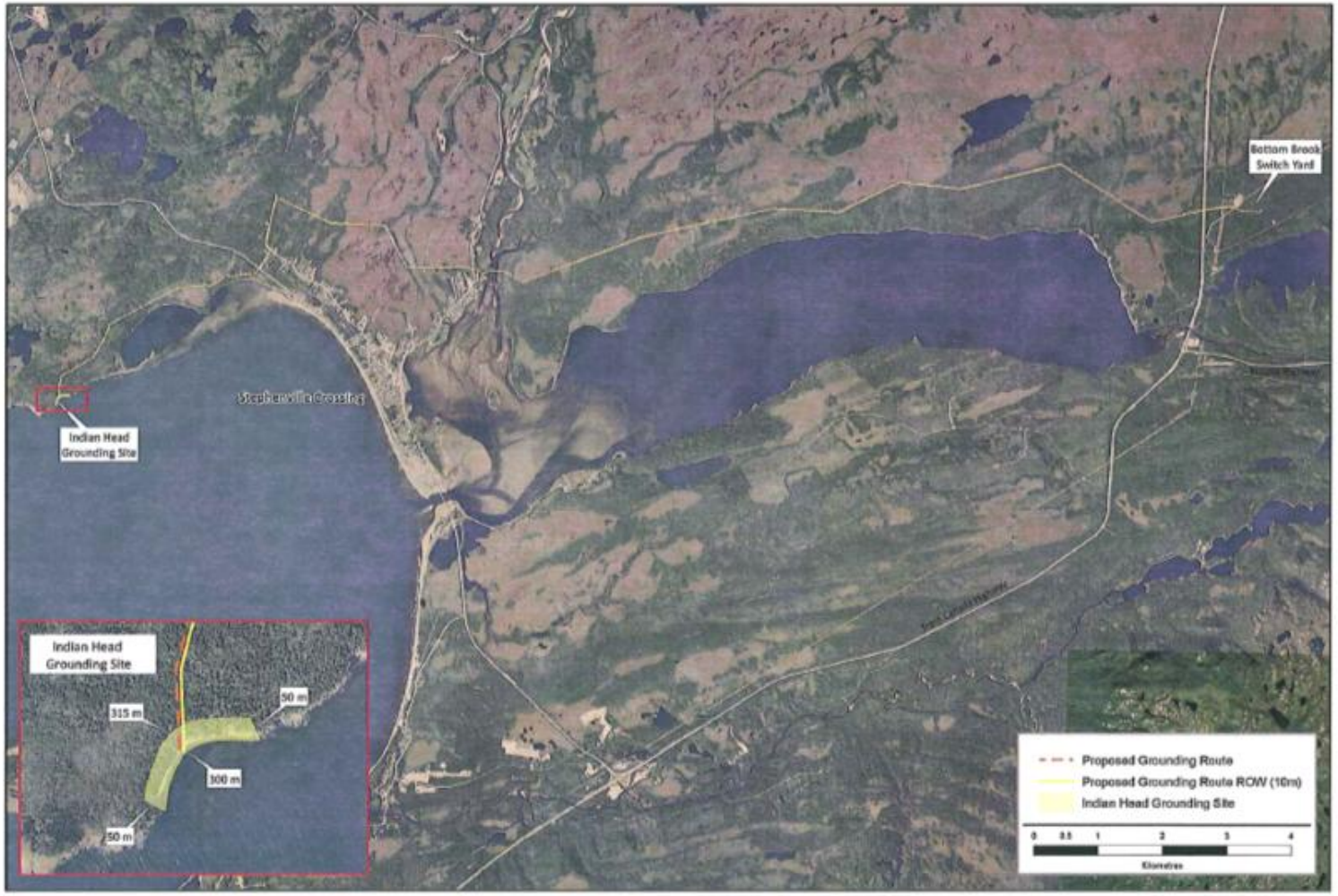
LINE ROUTING


TL250 Crossing
Segment-3
Potential River Crossing
TL250 Crossing
Segment-2
Granite Canal
Segment-1
Flooding Potential
NEWFOUNDLAND
Gulf of St Lawrence
Atlantic Ocean
NOVA SCOTIA
Emera
Newfoundland and Labrador
230 kV AC TRANSMISSION LINE
GRANITE CANAL TO BOTTOM BROOK
23001 ROUTE MAPS - OVERALL RELIEF
Legend
DRAFT
HATCH
DWG #: T 23001 1 200 02 001 Rev 3

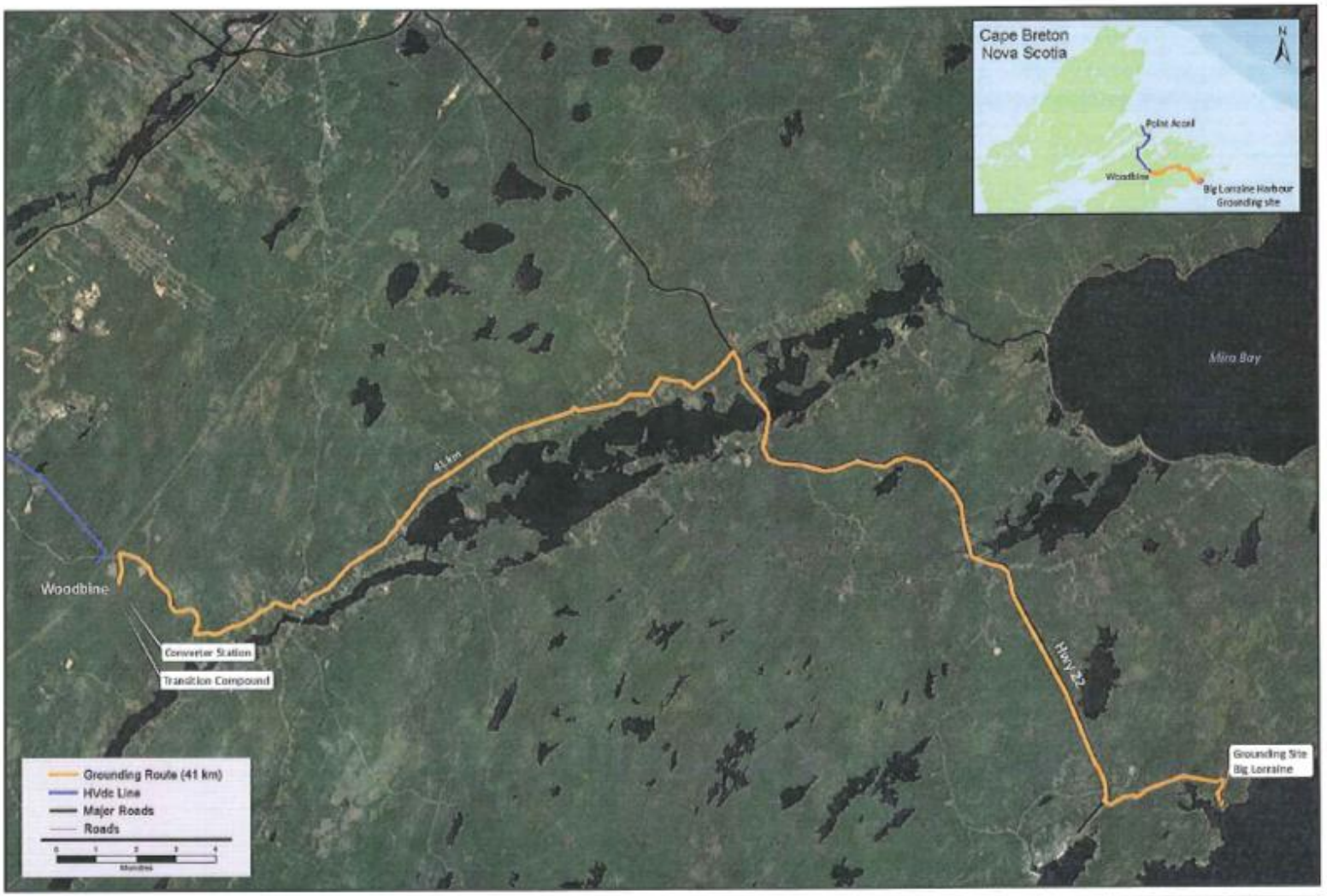

Wreckhouse design area.
PI-22A (Str. # SD-001) to
PI-31 (Str. # SD-138)
Emera
Newfoundland and Labrador
± 200 kV HVDC TRANSMISSION LINE
BOTTOM BROOK TO CAPE RAY
20006 ROUTE MAPS - OVERALL TOPOGRAPHY
Legend
HATCH
DWG #: X 20006 1 200 00 001 Rev 6

22


POINT ACONI TRANSITION COMPOUND
POINT ACONI
BIG BRAS D'OR
BRAS D'OR
SYDNEY MINES
NEW WATERFORD
NORTH SYDNEY
SYDNEY INDIAN RESERVE
SYDNEY
MEMBERTOU INDIAN RESERVE
CARIBOU MARSH INDIAN RESERVE
WOODBINE CONVERTER STATION
Emera
200 kV DC TRANSMISSION LINE
POINT ACONI TO WOODBINE STATION
20002 ROUTE MAPS - OVERALL RELIEF
Legend
DRAFT
HATCH
DWG #: X 20002 1 200 02 001 Rev 4

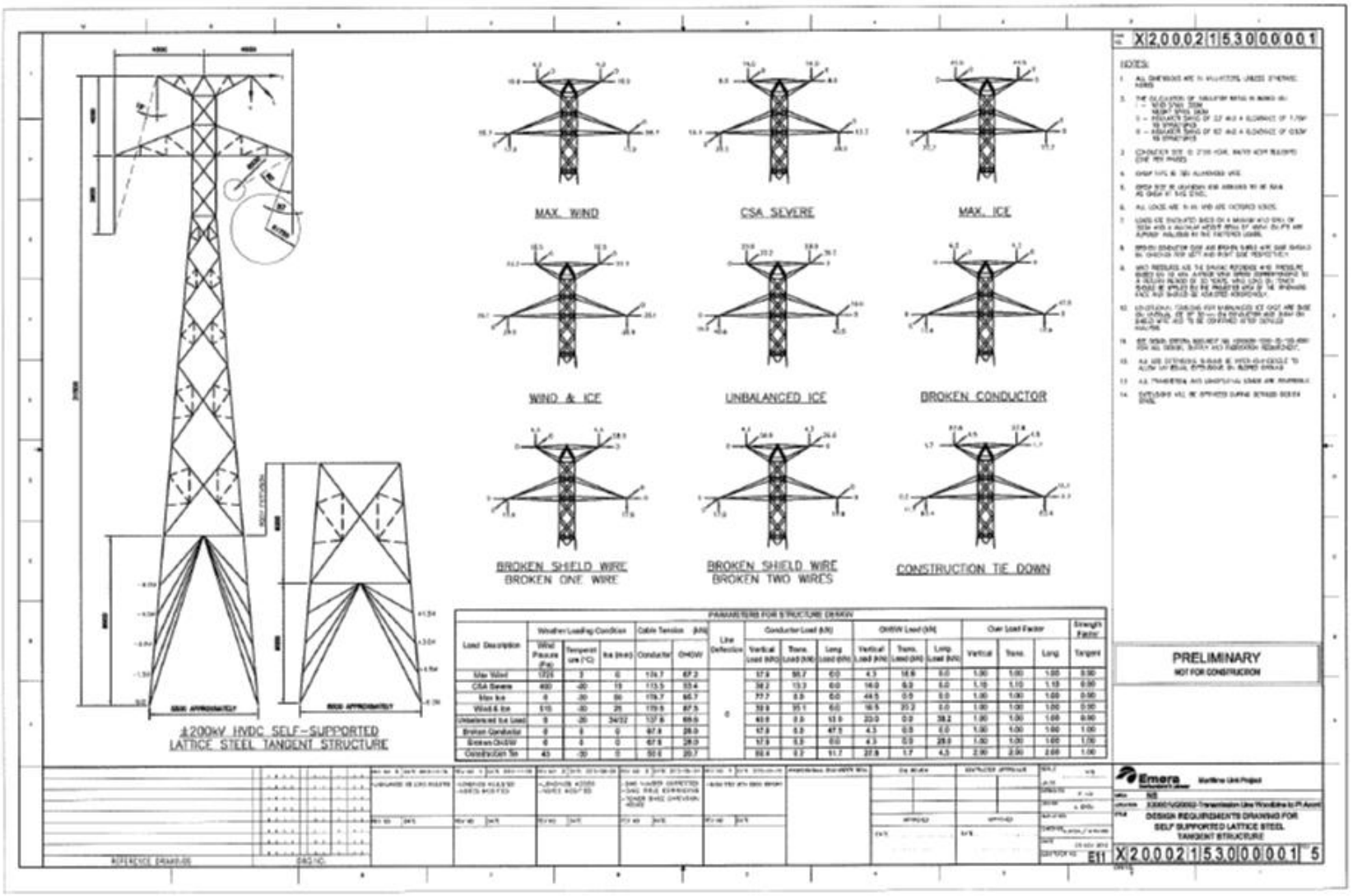


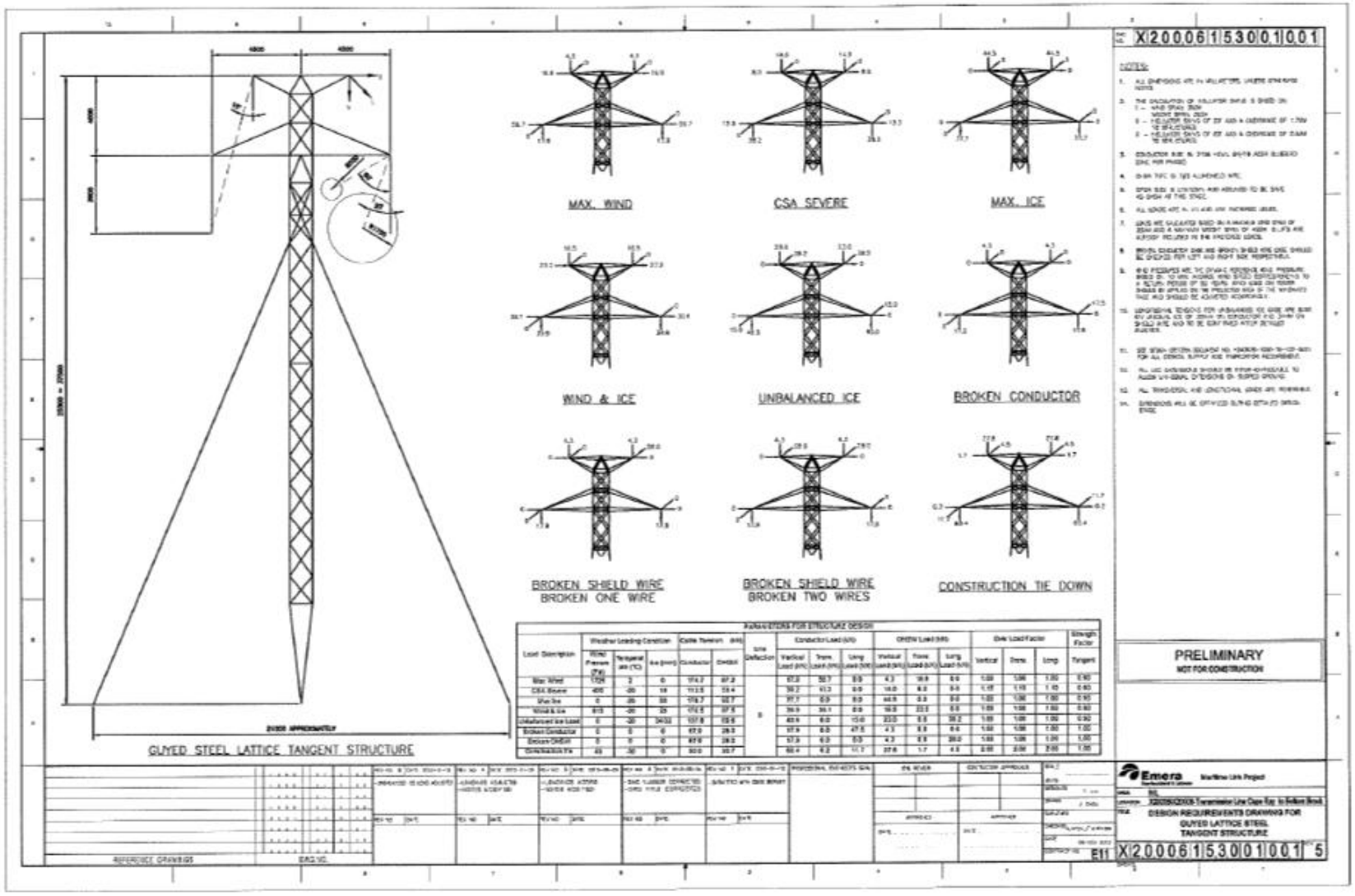
Emera	Data Source		Rev NO	Date	Rev NO	Date		Date 5/13/13	Location: Saint George's, Newfoundland
	Imagery: NALCOR, Rapid Eye						Drawn: H.Craig		TITLE
	Grounding Route and ROW: ENL						Checked:		Tree Clearing for Proposed Grounding Site
Coordinate System:	Grounding Site: ENL		Rev NO	Date			Approved:		Saint George's Grounding Site,
UTM NAD 83 Zone 21							Notes:		Newfoundland & Labrador
Scale: 1:20,000									
Date: 5/13/13									DWG #: 5-901NL-1-106-00-002 Rev. 2


Cape Breton
Nova Scotia
N
Point Aconi
Woodbine
Big Lorraine Harbour
Grounding site
Mira Bay
41 km
Woodbine
Converter Station
Transition Compound
Hwy 22
Grounding Site
Big Lorraine
Grounding Route (41 km)
HVdc Line
Major Roads
Roads
Emera
Data Source
Imagery: ESRI Base Map
Grounding Line: EMI
Rev NO
Date
Coordinate System:
UTM NAD 83 Zone 20
Scale: 1:125,000
Date: 6/14/13
Drawn:
Checked:
Approved:
Notes:
Date
6/14/13
Location: Cape Breton, Nova Scotia
TITLE
Grounding Line Route for
Nova Scotia
DWG #: E - 00501-1-704-00-001
Rev.

Appendix B
to Maritime Link - Basis of Design
Part A - Land Based Assets

STRUCTURE DRAWINGS


X20002153000001
NOTES:
MAX. WIND
CSA SEVERE
MAX. ICE
WIND & ICE
UNBALANCED ICE
BROKEN CONDUCTOR
BROKEN SHIELD WIRE
BROKEN ONE WIRE
BROKEN SHIELD WIRE
BROKEN TWO WIRES
CONSTRUCTION TIE DOWN
±200kV HVDC SELF-SUPPORTED
LATTICE STEEL TANGENT STRUCTURE
PARAMETERS FOR STRUCTURE DRAWN
PRELIMINARY
NOT FOR CONSTRUCTION
Emera
DESIGN REQUIREMENTS DRAWING FOR
SELF SUPPORTED LATTICE STEEL
TANGENT STRUCTURE
X20002153000001 5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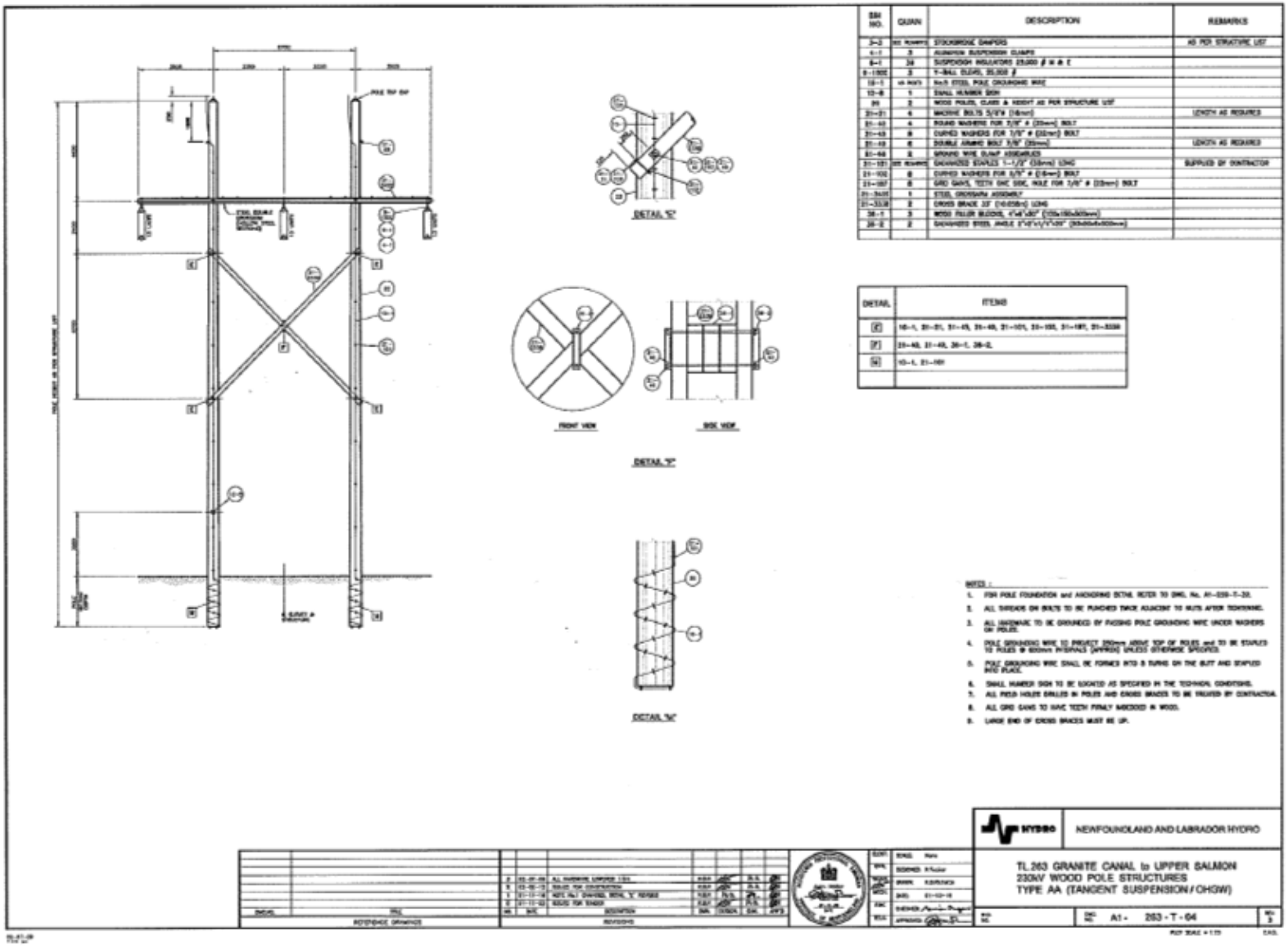
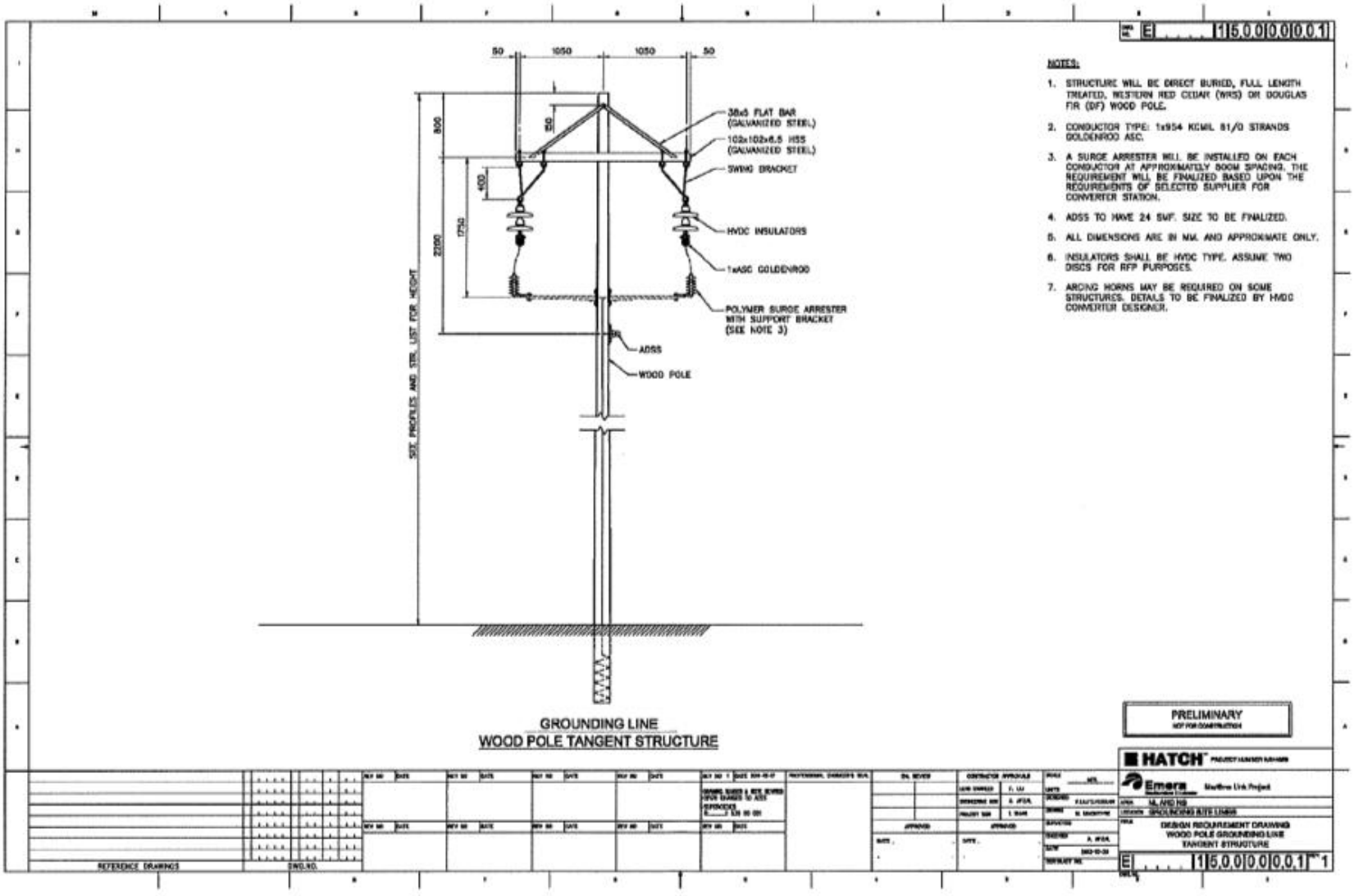
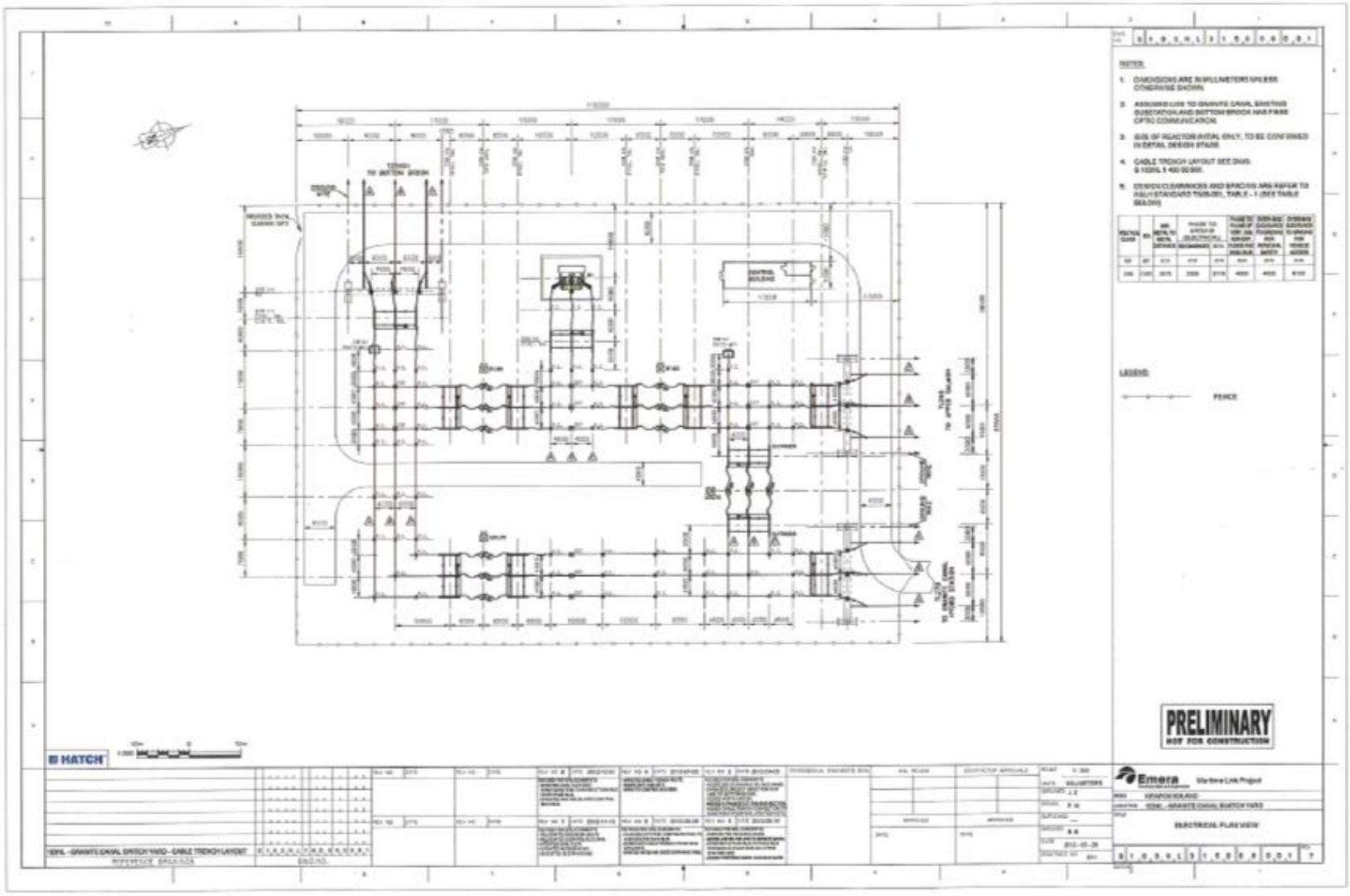
NOTES:
MAX. WIND
CSA SEVERE
MAX. ICE
WIND & ICE
UNBALANCED ICE
BROKEN CONDUCTOR
BROKEN SHIELD WIRE
BROKEN ONE WIRE
BROKEN SHIELD WIRE
BROKEN TWO WIRES
CONSTRUCTION TIE DOWN
GUYED STEEL LATTICE TANGENT STRUCTURE
PRELIMINARY
NOT FOR CONSTRUCTION
Emera
DESIGN REQUIREMENTS DRAWING FOR
GUYED LATTICE STEEL
TANGENT STRUCTURE
X20006153001001 5


DETAIL "E"
DETAIL "F"
FRONT VIEW
SIDE VIEW
DETAIL "G"
NOTES :
1. FOR POLE FOUNDATION and ANCHORING DETAIL REFER TO DWG. No. A1-259-T-20.
2. ALL SHEAVES ON BOLTS TO BE PUNCHED TWICE ADJACENT TO NUTS AFTER TIGHTENING.
3. ALL HARDWARE TO BE GROUNDED BY PASSING POLE GROUNDING WIRE UNDER WASHERS ON POLES.
4. POLE GROUNDING WIRE TO PROJECT 300mm ABOVE TOP OF POLES and TO BE STAPLED TO POLES @ 600mm INTERVALS (APPROX) UNLESS OTHERWISE SPECIFIED.
5. POLE GROUNDING WIRE SHALL BE FORMED INTO 3 TURNS ON THE BUTT AND STAPLED INTO PLACE.
6. SMALL NUMBER SIGN TO BE LOCATED AS SPECIFIED IN THE TECHNICAL CONDITIONS.
7. ALL FIELD HOLES DRILLED IN POLES AND CROSS BRACES TO BE TREATED BY CONTRACTOR.
8. ALL GRD GAINS TO HAVE TEETH FIRMLY EMBEDDED IN WOOD.
9. LARGE END OF CROSS BRACES MUST BE UP.
NEWFOUNDLAND AND LABRADOR HYDRO
TL 263 GRANITE CANAL to UPPER SALMON
230kV WOOD POLE STRUCTURES
TYPE AA (TANGENT SUSPENSION / OHGW)
A1 - 263 - T - 64


50
1050
1050
50
38x6 FLAT BAR (GALVANIZED STEEL)
102x102x6.5 HSS (GALVANIZED STEEL)
SWING BRACKET
HVDC INSULATORS
1xASC GOLDENROD
POLYMER SURGE ARRESTER WITH SUPPORT BRACKET (SEE NOTE 3)
ADSS
WOOD POLE
800
250
400
1750
2200
SEE PROFILES AND STR. LIST FOR HEIGHT
GROUNDING LINE
WOOD POLE TANGENT STRUCTURE
NOTES:
1. STRUCTURE WILL BE DIRECT BURIED, FULL LENGTH TREATED, WESTERN RED CEDAR (WRS) OR DOUGLAS FIR (DF) WOOD POLE.
2. CONDUCTOR TYPE: 1x954 KCMIL 81/0 STRANDS GOLDENROD ASC.
3. A SURGE ARRESTER WILL BE INSTALLED ON EACH CONDUCTOR AT APPROXIMATELY 800M SPACING. THE REQUIREMENT WILL BE FINALIZED BASED UPON THE REQUIREMENTS OF SELECTED SUPPLIER FOR CONVERTER STATION.
4. ADSS TO HAVE 24 SMF. SIZE TO BE FINALIZED.
5. ALL DIMENSIONS ARE IN MM. AND APPROXIMATE ONLY.
6. INSULATORS SHALL BE HVDC TYPE. ASSUME TWO DISCS FOR RFP PURPOSES.
7. ARCING HORNS MAY BE REQUIRED ON SOME STRUCTURES. DETAILS TO BE FINALIZED BY HVDC CONVERTER DESIGNER.
E 1 5 0 0 0 0 0 1
PRELIMINARY
NOT FOR CONSTRUCTION
HATCH
Emera
Maritime Link Project
DESIGN REQUIREMENT DRAWING
WOOD POLE GROUNDING LINE
TANGENT STRUCTURE
E 1 5 0 0 0 0 0 1 REV 1
REFERENCE DRAWINGS
DWG NO.

Appendix C
to Maritime Link - Basis of Design
Part A - Land Based Assets

STATION LAYOUTS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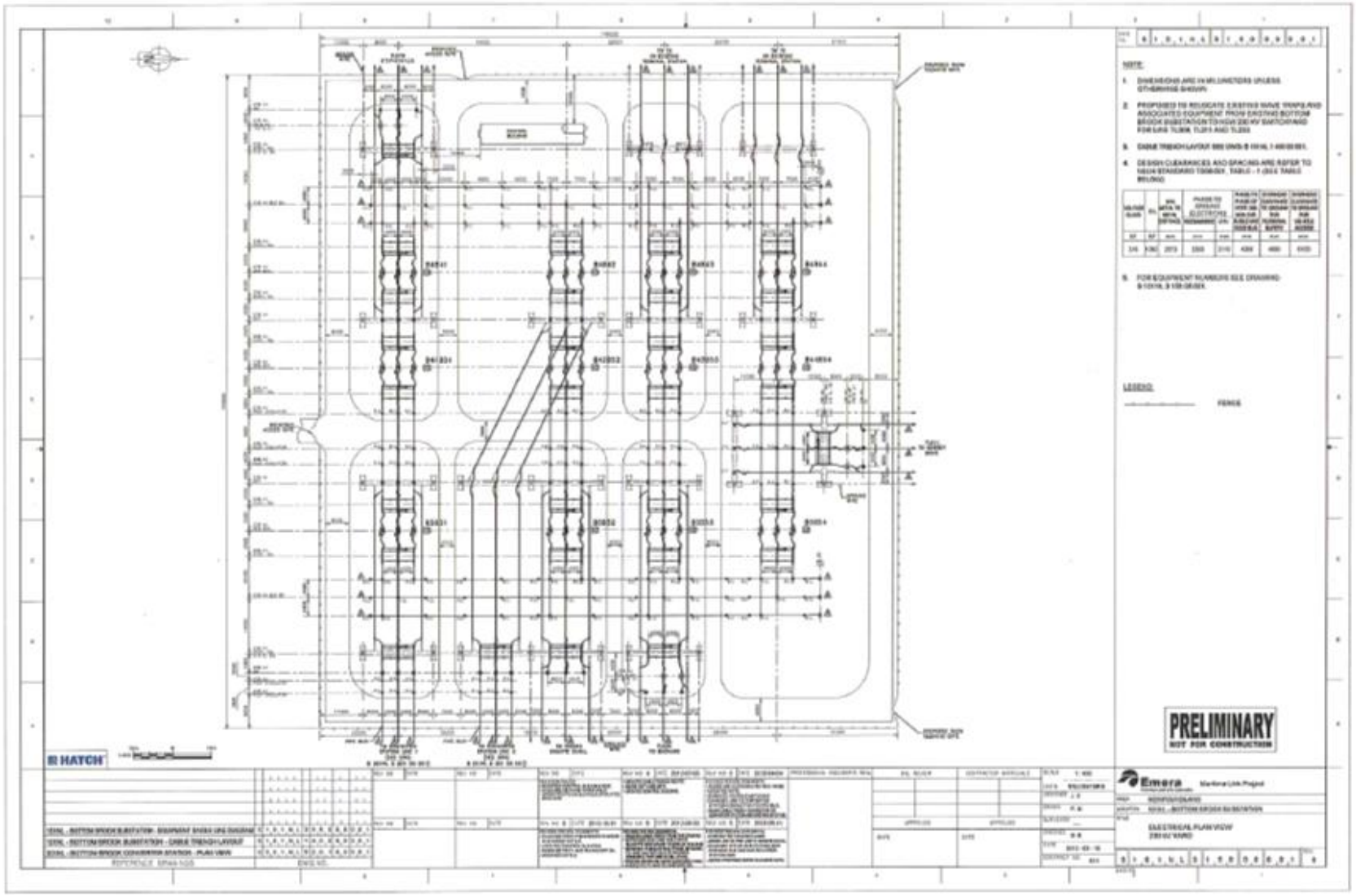
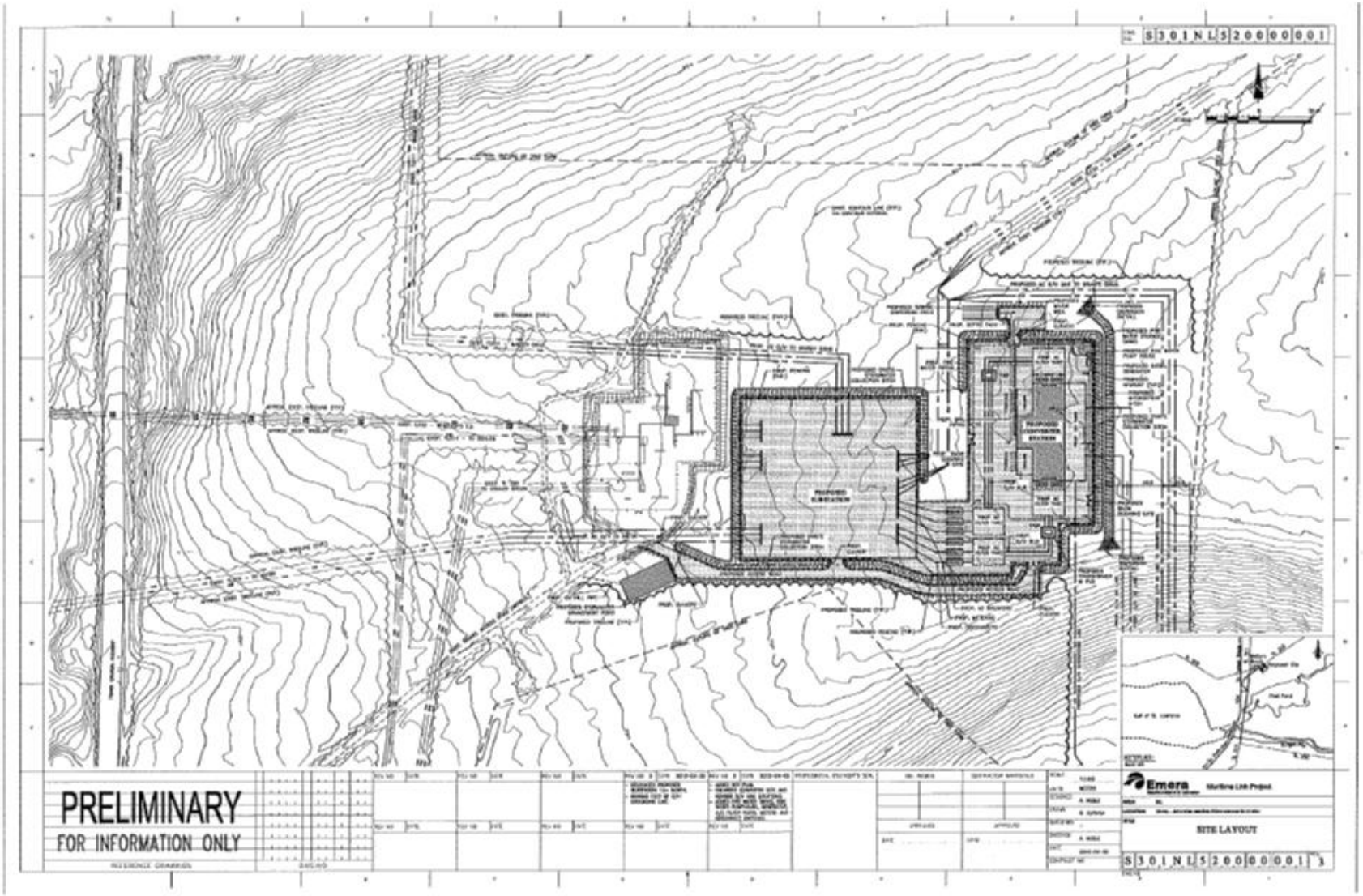
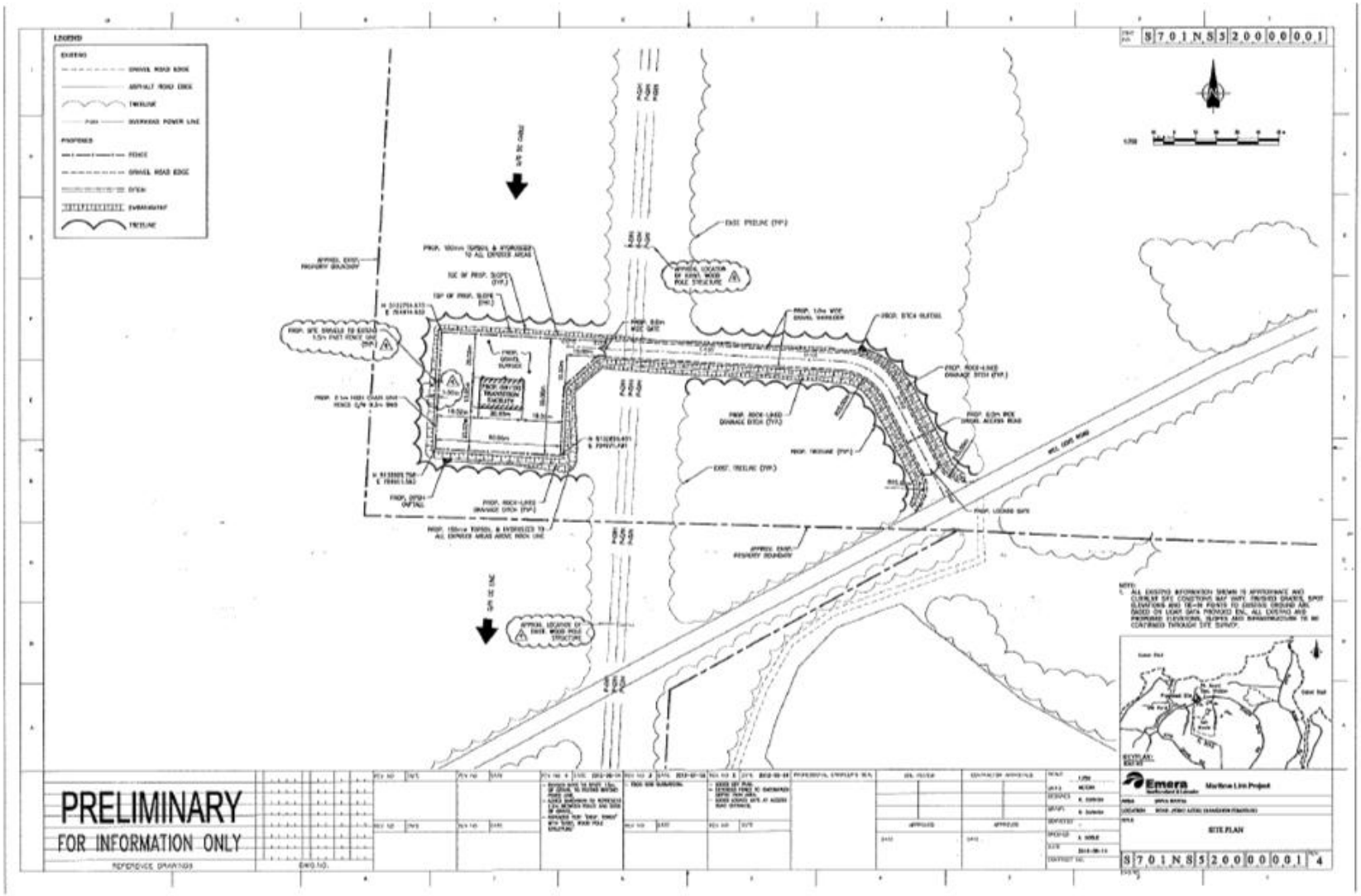
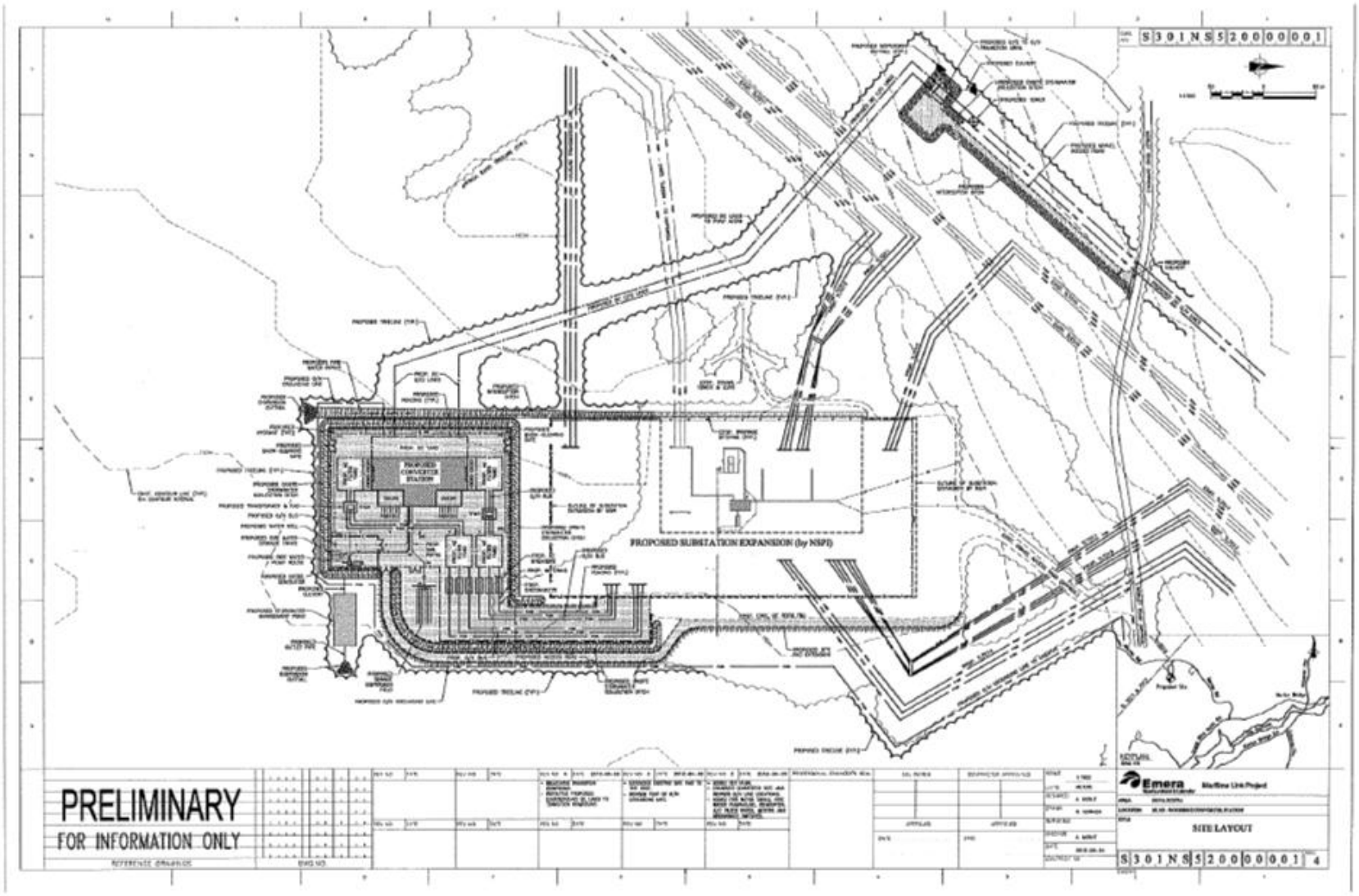
NOT FOR CONSTRUCTION
HATCH
Emera
Maritime Link Project
ELECTRICAL PLAN VIEW

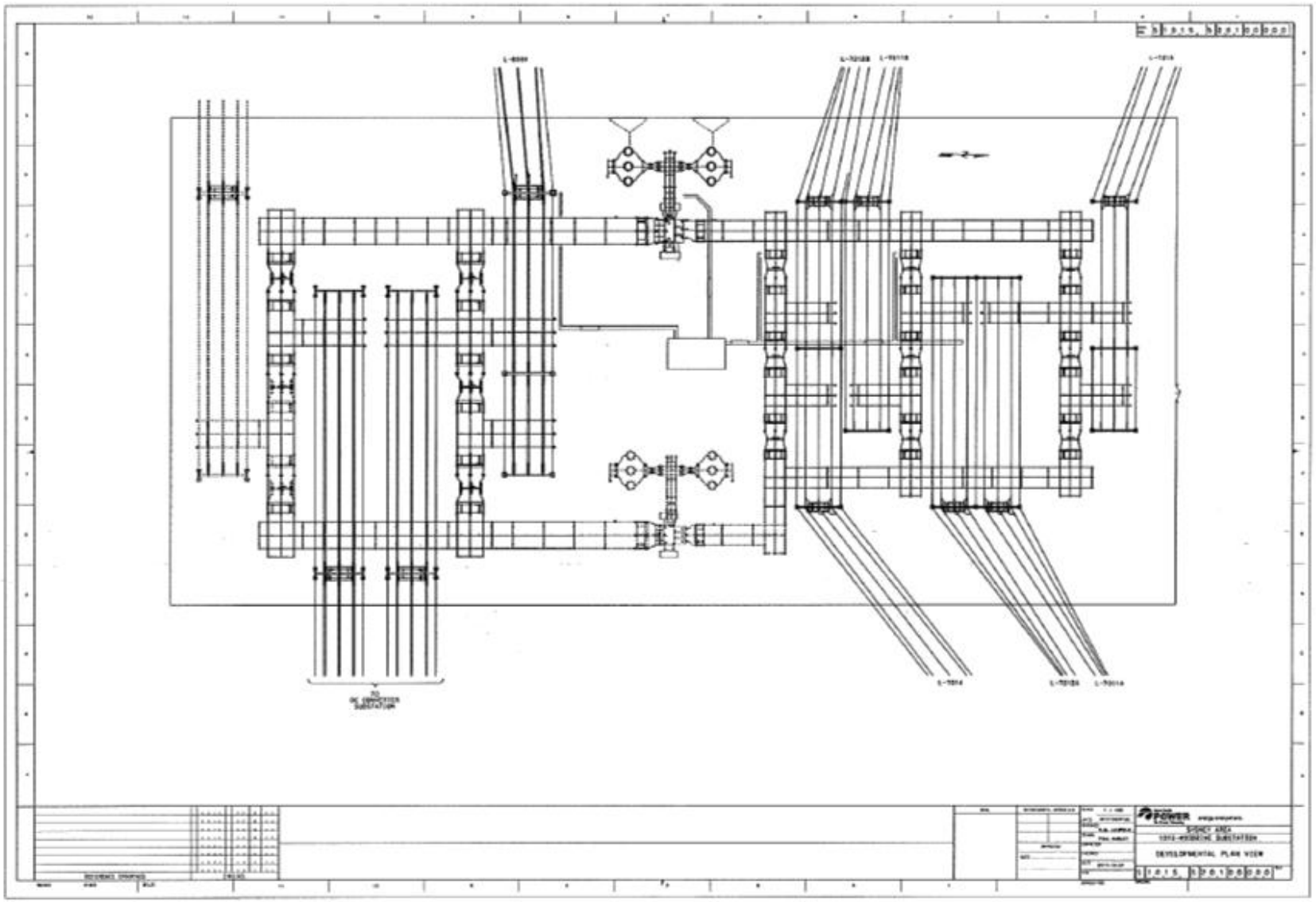

NOTE
1. DIMENSIONS ARE IN MILLIMETERS UNLESS OTHERWISE SHOWN.
2. PROPOSED TO RELOCATE EXISTING WAVE TRAP(S) AND ASSOCIATED EQUIPMENT FROM EXISTING BOTTOM BROOK SUBSTATION TO HIGH 230 KV SWITCHYARD FOR LINE TL309, TL311 AND TL333.
3. CABLE TRENCH LAYOUT SEE DWG B 10116, 1 400 00 001.
4. DESIGN CLEARANCES AND SPACING ARE REFER TO 10014 STANDARD TS00004, TABLE - 1 (SI) TABLE BELOW.
5. FOR EQUIPMENT NUMBERS SEE DRAWING B 10116, 3 100 GE001.
LEGEND
FENCE
PRELIMINARY
NOT FOR CONSTRUCTION
HATCH
Emera
Maritime Link Project
ELECTRICAL PLAN VIEW
230 kV YARD


PRELIMINARY
FOR INFORMATION ONLY
Emera
Maritime Link Project
SITE LAYOUT


Study Area
Transition Compound Site (Site A -Preferred)
Fence
Transition Compound
Gravel Access Road
83 m
289 m
495 m
186 m
25 m

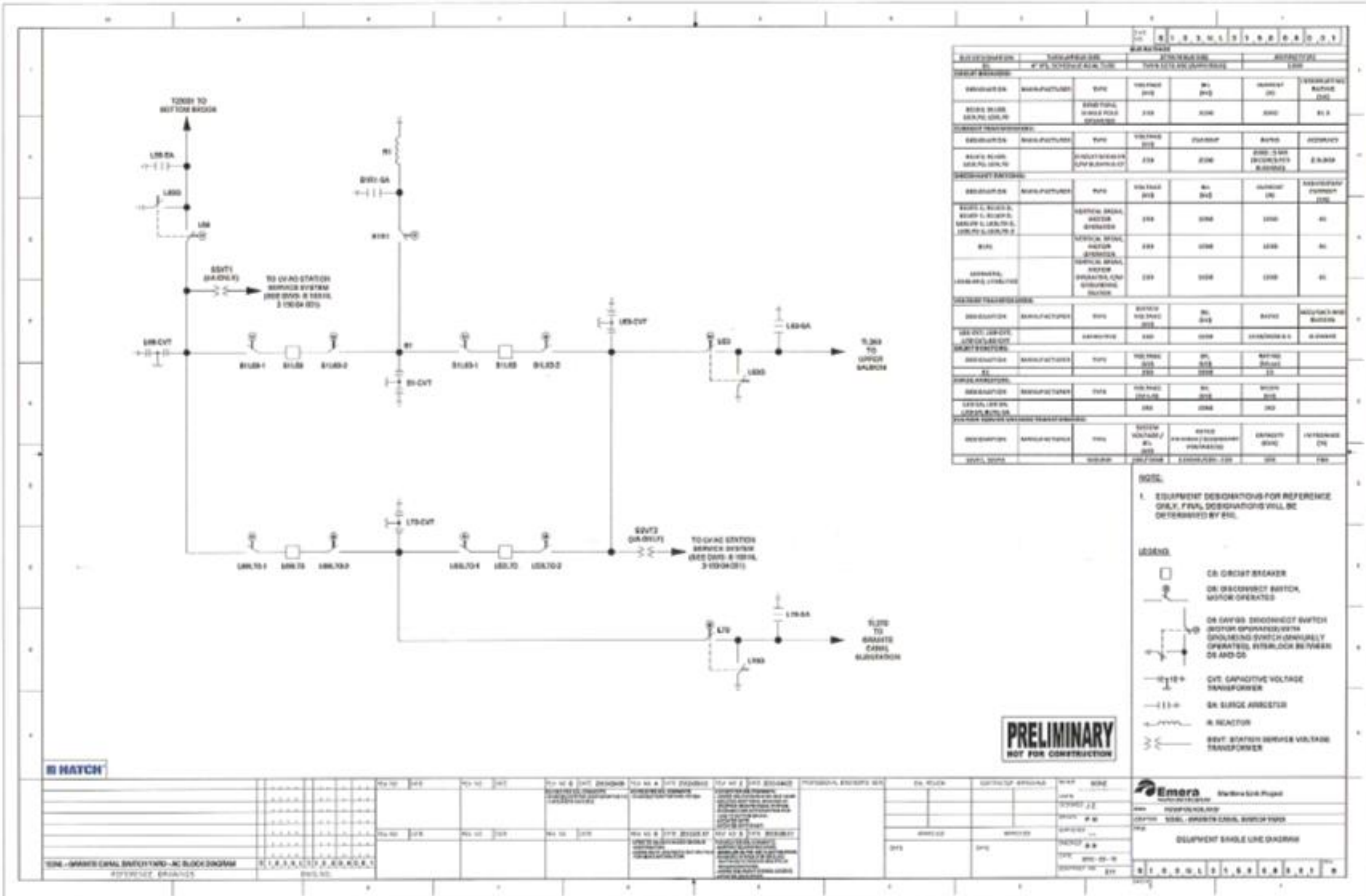

LEGEND
EXISTING
PROPOSED
PRELIMINARY
FOR INFORMATION ONLY
SITE PLAN
Emera
Maritime Link Project


S301NS5200000001
PROPOSED SUBSTATION EXPANSION (by NSPI)
PRELIMINARY
FOR INFORMATION ONLY
Emera
Maritime Link Project
SITE LAYOUT
S301NS5200000001 4



Appendix D
to Maritime Link - Basis of Design
Part A - Land Based Assets

SINGLE LINES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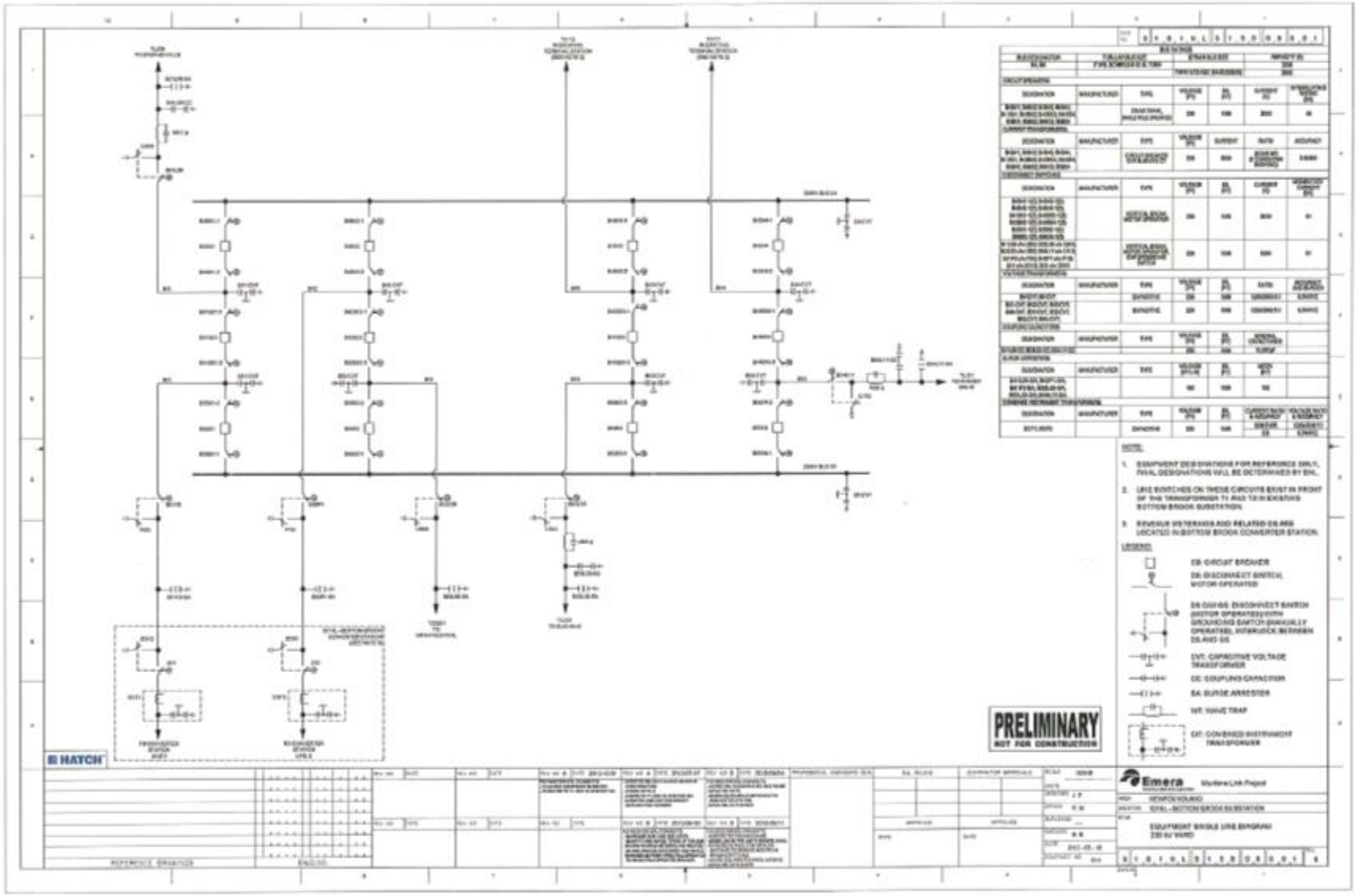
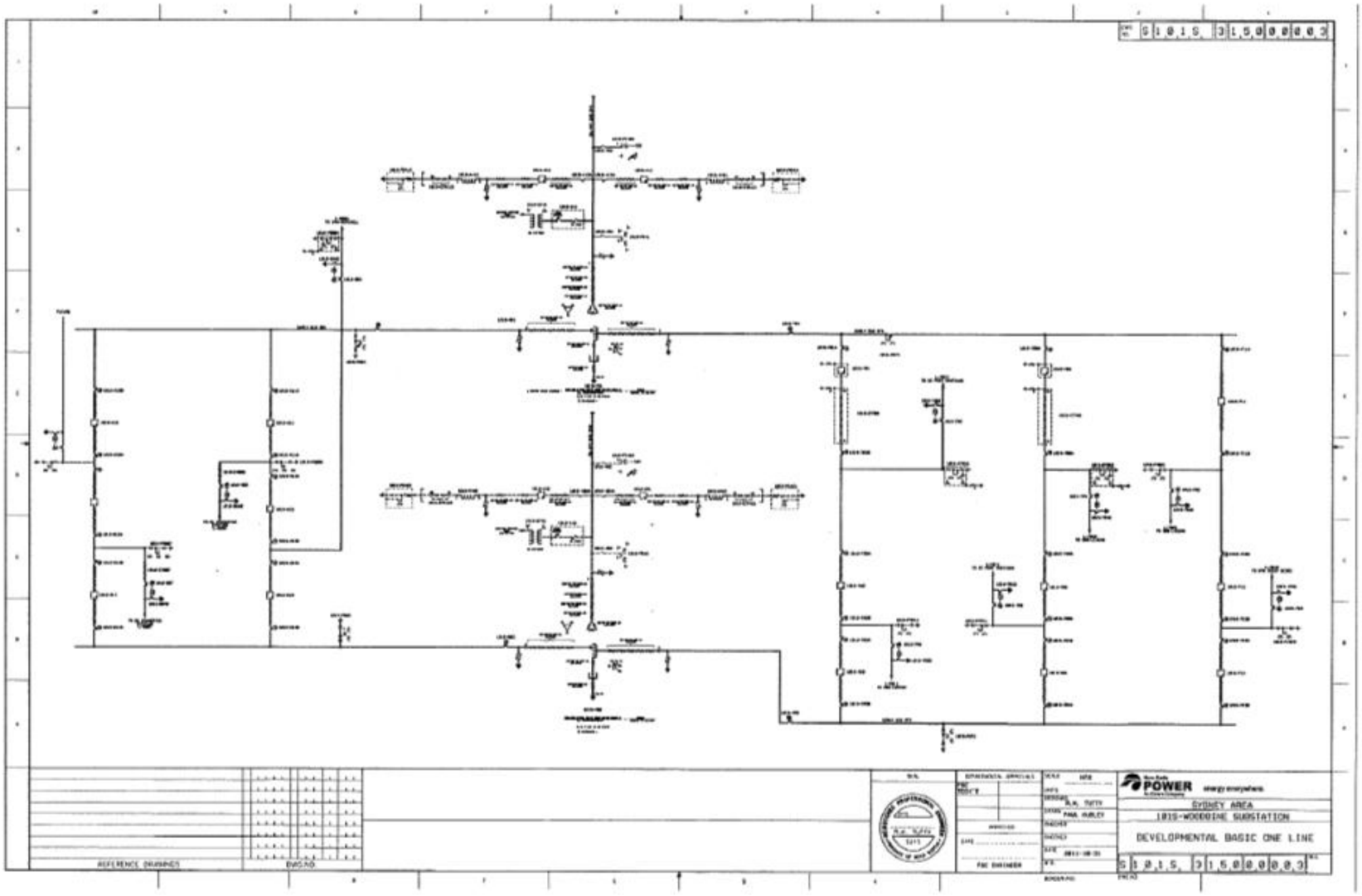
NOT FOR CONSTRUCTION
HATCH
Emera
EQUIPMENT SINGLE LINE DIAGRAM


PRELIMINARY
NOT FOR CONSTRUCTION
HATCH
Emera
Maritime Link Project


POWER
SYDNEY AREA
1815-WOODBINE SUBSTATION
DEVELOPMENTAL BASIC ONE LINE

Maritime Link - Basis of Design

Part B - Marine Assets

REFERENCE DOCUMENTS

Reference	Document Number	Title
1	MLP-EM-RPT-0001	Constructability- Marine Assets
2	MLP-CT-PLN-0001	Project Execution Plan
3	M 00000 5 100 14 001	Shoreline Surveys for Potential HVDC Cable Landing Site
4	M 00000 8 100 14 001	Report on Microtunneling for Cable Landfall
5	M 00000 8 100 19 001	Cabot Strait Trenched Landfall Feasibility Study
6	M 20000 8 100 01 004	CAST Corridor Route Fishing Activity Analysis
7	M 20000 8 100 01 005	Updated Analysis of Fisheries Harvesting Activities and Catch Location 1997-2010 CAST Corridor area
8	M 20000 8 100 14 001	Maritime Link Project Report on CAST Vessel Traffic Data Analysis
9	M 20000 8 100 14 002	Maritime Link Project Subsea Cable Corridor Survey Cabot Strait
10	M 20000 8 100 14 003	Interpretation of Recent Survey Data Cabot Strait
11	M 20000 8 100 19 001	Updated Ice Risk Analysis for Cabot Strait Crossing
12	M 20000 8 100 19 002	Dragging Anchor Risk for Cabot Strait Cable Crossing
13	M 20000 8 100 19 004	Burial Depth Requirements for Subsea Power Cable
14	M 20000 8 100 19 005	Assessment of Large Pockmark Region Maritime Link Cable Route
15	M 20000 8 100 19 006	Assessment of the Near Shore Landing Site and Route Selection for the Cabot Strait Cable Crossing
16	M 20000 8 100 19 007	Seismic Hazard Faults and Earthquakes Maritime Link Cabot Strait Region
17	M 20000 8 100 19 008	Maritime Link Project Sediment Transfer Study
18	M 60000 8 100 19 001	HDD Landfall Feasibility Study Maritime Link Cabot Strait

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SECTION 1 - INTRODUCTION

1.1 Background

The Maritime Link (ML) project was launched in 2011 following partnership discussions between Emera and Nalcor and the Provinces of Nova Scotia (NS) and Newfoundland (NL) and Labrador. The scope of the project includes the design, construction and commissioning of the Maritime Link with the appropriate Environmental, Regulatory, Aboriginal and other Stakeholders support and appropriate approvals. The objective of the project schedule is to commission the system in preparation for turnover and start up in 2017.

As part of these partnership discussions, NSP Maritime Link Inc. (NSPML) is to execute a transmission construction project interconnecting the electrical power systems of the island of Newfoundland and Nova Scotia.

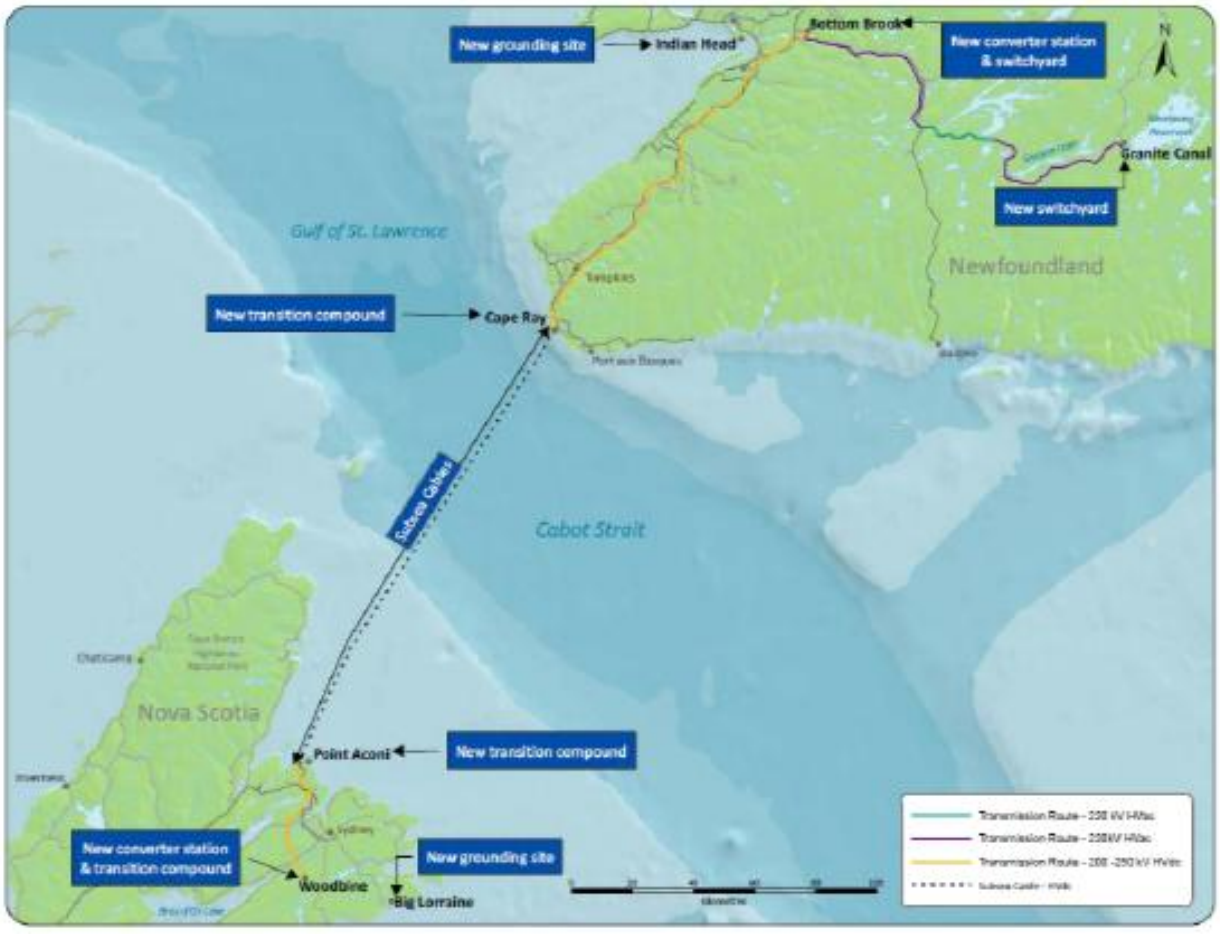

Figure 1: ML Project Overview

1.2 Document Purpose

This document reflects activities undertaken during Phase 1, Phase 2 and Phase 3 of the ML Project up to the time of the Cover Sheet signing. This document will be used to support the business case and concept selection in Phase 3 of the project in the lead up to Decision Gate 3 (DG3).

1.3 Scope

The scope of this document is to describe the basis of design of the Marine Assets of the ML Project.

The Marine scope of work consists of:

- Installation of two underground HVDC cables, approximately 0.75 km, from the transition compound at Point Aconi NS to the jointing bay/anchoring structure at the point of landfall.
- Construction of an underground jointing bay/anchoring structure to house the transition joint between the submarine and underground cables at the point of landfall in Point Aconi NS.
- Construction of two HDD lined boreholes, each approximately 1100 m long, at Point Aconi landfall with a subsea exit at 12 m water depth.
- Pulling of the subsea HVDC cables through the HDD lined boreholes at Point Aconi NS up to the jointing bay/anchoring structure.
- Laying of two subsea HVDC cables, each approximately 170 Km long, across the Cabot Strait from Point Aconi NS to Cape Ray NL.
- Protection of submarine cable up to 400 m water depth using the burial technique of hydro-jetting supplemented by rock placement as a remedial mean of protection where jetting does not achieve required burial depth.
- Construction of two HDD lined boreholes, each approximately 430 m long, at Cape Ray NL landfall with an exit at 23 m water depth.
- Pulling of subsea the HVDC cables through the HDD lined boreholes at Cape Ray NL up to the jointing bay/anchoring structure.
- Construction of an underground jointing bay/anchoring structure to house the transition joint between the submarine and underground cables at the point of landfall in Cape Ray NL.
- Installation of two underground HVDC cables, each approximately 2.4 kms long, from the transition compound at Cape Ray NL to the jointing bay/anchoring structure.

1.4 Out of Scope

Items out of the scope of this document are:

- Muskrat Falls (MF) and Labrador Island Link (LIL) projects that, managed by Nalcor.
- ML Project Land based assets (beyond the terminations at transition compounds).
- ML Project schedule.
- ML Project budget.
- ML Project environmental and regulatory approval processes.
- ML Project Health, Safety, Security and Quality requirements.

SECTION 2 - MARINE ASSETS BASIS OF DESIGN

The following section provides an overview of the Basis of Design of Marine Assets of the Maritime Link Project.

2.1 Cable System Design

The Marine Cable System of the ML project consists of:

- 2 HVDC Mass Impregnated (MI) subsea cables approximately 170 Km each, rated for ±200KV DC, 1250 A and 500 MW (250 MW per pole).
- Underground HVDC MI land cables at each landfall point rated for ±200KV DC, 1250 A and 500 MW.
- Land to subsea cable transition joints.
- Subsea Cable armor anchors and transition bays.
- Cable terminations in transition compounds.
- Surge arrestors as required at terminations.

The HVDC cables and associated accessories will be designed for bi-pole operation, but with the ability to operate in mono pole as required by using the grounding sites, and transmit half the rated power. The HVDC cables will be Mass-Impregnated (MI) with a proven design and 50 year life expectancy that has a high standard of reliability in service with previous satisfactory operating performance.

Each HVDC cable will be single core design. The conductor will be sized to transmit the required current while meeting the environmental, operating and installation requirements. The conductor will be designed to withstand the mechanical loads applied to it during all phases of installation and possible future repairs.

Subsea cables will be provided with torque balanced, counter-wound corrosion resistant steel armoring suitable to withstand all installation, protection, trenching, and environmental loading. The land cable will not require armoring, but will be designed to accommodate the forces required for installation and protection in land trenches.

Land and subsea cables will include embedded thermal monitoring fibre optic elements from the Distributed Temperature Sensing Unit (DTS) in the transition compounds to approximately the 5 km mark of the subsea cable, at each end.

The HVDC cables will have a design life of 50 years. The cable system will be designed and manufactured such that minimal maintenance is required for the design life of the cables other than periodic visual external inspections where possible and testing if required.

The cable system design will be finalized during detailed engineering phase by the cable contractor with NSPML's approval.

2.2 Installation Design

Each of the subsea cables will be installed within separate HDD lined borehole at the landfall points. Pulling the cables in separate HDD lined boreholes is intended to reduce the installation risk, cables will be designed to withstand pull in stresses and limiting the pulling forces will remove the risk of damage to the cable.

The two subsea cables will be laid separately (unbundled) on the seabed in order to increase reliability and availability of the link. This will allow transmittal of half the rated power of the system using one cable and sea return provided by the grounding sites while the second cable is being maintained, tested or repaired. In addition to that, laying the cables unbundled has the following advantages:

- Lowering the risk of simultaneous damage to both cables by third party /external factors.
- Lowering the risk of damaging the second cable during possible repair of a damaged cable.
- Lowering the risk of damage to adjacent cable in the event of a cable electrical fault.
- Maximizing the length of continuous cable transported on Cable Lay Vessel (CLV) and hence reducing the number of subsea joints.
- Reducing the conductor size.

The horizontal separation between the two subsea cables will be finalized during the detailed engineering phase, but the minimum cable separation is expected to be at least 100 m or two times the water depth in deeper sections. The horizontal separation of the two cables will be in the range of 10 m to 15 m in the sand channels in the near shore area at Point Aconi NS due to the limited width of the channel; the separation distance will be

finalized during the detailed engineering phase in order to ensure that the 2 cables are thermally independent.

The land cables will be laid in a common trench. The separation between the two land cables will be finalized during the detailed engineering phase such that there is no thermal interference between the cables. This separation will also allow for repairing one cable while the other is still operational.

2.3 Subsea Cable Route Design

NSPML has identified a subsea cable corridor from Cape Ray NL to Point Aconi NS across the Cabot Strait to lay the 2 subsea cables. The subsea corridor is approximately 170 Km long, 2 Km wide and 470 m at its deepest point. The subsea corridor has been optimized to ensure a risk mitigated route from Cape Ray NL to Point Aconi NS. An abandoned telephone cable TAT2 (owned by AT&T, abandoned in 1982) crosses the proposed subsea corridor centerline in two places, at approximately kilometer point (KP) 68 and then again at KP 134. The nearest active fibre optic cable APOCS1C (owned by Bell Alliant, active since 1992) travels parallel to, and just east of the subsea corridor. Refer to Drawing number M 20000 5 300 03 001 in Appendix A for more details.

NSPML has conducted geophysical and geotechnical survey investigations along the subsea corridor across the Cabot Strait between NL and NS [Ref 9].The purpose of the survey was to characterize bathymetric, seafloor and sub-seafloor conditions along the 2 km wide cable corridor between landing points at Cape Ray NL and Point Aconi NS. The scope of work for the subsea corridor survey included:

- Collection of sub-bottom profiler data at a sufficient spacing and resolution to map and document overburden thickness to a depth of 5 m or better, or to the bedrock surface, where that surface is interpreted to be less than 5 m below the seabed.
- Collection of multibeam data at a sufficient spacing and resolution to map and document seafloor topography with horizontal resolution of 2 to 5 m (dependent on water depth).
- Collection of side scan data at a sufficient spacing and resolution to map and document general seafloor sediment type based on a qualitative assessment of reflectivity, and to map specific sonar contacts on the seafloor that may present potential hazards for trenching and cable laying operations.
- Collection of magnetometer data to locate charted cables or other magnetically detected debris within the cable corridor.
- Collection of vibrocore or gravity core samples at designated locations along the centreline of the subsea corridor for soil classification and strength assessments.
- Collection of surficial grab samples at the core locations for subsequent geochemical testing.

- NSPML has also conducted several additional studies along the subsea cable route:
- A detailed interpretation of seabed and subsurface features that includes a regional assessment of the area based on published government maps and reports, as well as available industry information [Ref 10].
- An assessment of the nearshore portion of the cable route for the Maritime Link off Point Aconi NS to evaluate the reports and imagery available, in order to micro site the cables coming ashore and evaluate HDD routes and seabed exit locations [Ref 15].
- An assessment of a region of the Maritime Link cable route located on the Laurentian Channel flank of the Cape Breton Shelf characterized by a cluster of faults in the subsurface bedrock, gas–charged sediments in the overlying surficial material, large linear-shaped pockmarks at the seabed and venting gas in the overlying water column [Ref 14].
- An assessment of the seismic hazard for the area of the Maritime Link cable crossing in the Cabot Strait between NS and NL, as well as the regional and local distribution of faults and earthquakes [Ref 16]. The report assessed the known and studied faults of the region summarizing their distribution and characteristics followed by an assessment of the seismic risk based on information provided by the Geological Survey of Canada, (Earthquakes Canada). The report concluded that there does not appear to be any earthquakes associated with or nearby the proposed Maritime Link Cable route; a zone of shallow bedrock faults occurs on the flank of the Laurentian Channel along the route, but there does not appear to be any activity on these faults as evidenced from the seismic maps and the overlying sediments.

The final cable route within the designated subsea corridor will be designed during the detailed engineering phase by the cable contractor/installer and approved by NSPML. The cable contractor will design the final route that minimizes risks due to natural hazards including natural sea bed sediment mobility, cable free span and sensitive areas pertaining to marine ecology and fisheries. A pre-installation survey will be conducted by the cable contractor who will determine the requirements based on an interpretation and gap analysis of all the subsea cable route data provided by NSPML.

2.4 Subsea Cable Protection Design

The subsea cables of the ML project will be protected on the seabed from external hazards by burial in order to enhance the reliability and availability of the link. The external factors that could affect the subsea cables in the Cabot Strait are:

- Pack ice at both landfall points and Icebergs on the NL landfall point only. (Icebergs on the Newfoundland side have not been spotted in decades in this area, however evidence of relict iceberg scours has been found on the seabed near Newfoundland).

- Fishing activities (Trawling and fixed gear).
- Dropped/Dragged anchors.

An ice risk analysis study was performed for the subsea cables across the Cabot Strait [Ref 11]. The allowable annual probability of ice contact per meter of cable was calculated using the target reliability of 10^{-3}. Upward looking sonar data collected on Makkovik Bank by the Bedford Institute of Oceanography were used to define the pack ice keel distribution and a maximum ice keel cutoff of 25 m was selected for the analysis (Further re-assessment is being conducted regarding the maximum ice keel cutoff depth). The analysis assumes no iceberg risk on the Nova Scotia side of the Cabot Strait and a maximum keel draft cut off of 100 m for iceberg scour risk near Newfoundland landfalls. The recommended maximum design gouge depth was found to be 1.7 m for pack ice and 0.5 m for icebergs.

Two reports have been created to describe the current fishing activity in the Cabot Strait. [Ref 6 & Ref 7]. The reports categorized the species, the harvesting method along the cable route, and identified the "Active fishing Zones. The fishing equipment along the Cabot Strait can be divided into two categories: mobile fishing gear consisting of otter trawling and scallop dredging, and fixed fishing gear (lobster and crab traps).

In order to determine the dragged anchor criteria for the protection requirement of the Maritime Link, the vessel traffic data for the region of interest, along with vessel type and size to understand anchor size was performed [Ref 8]. A dragged anchor risk analysis was also performed based on the vessel traffic data and damage reports from communication cables in the Cabot Strait [Ref 12].

A Sediment Transfer Study to generate necessary data on dynamic features of the corridor sediments was conducted [Ref 17].

The information presented in the above referenced studies has been combined and used to develop burial depth requirements for the subsea power cable across the Cabot Strait [Ref 13]. These requirements are summarized below (burial depth requirements are based on both the centerline profile of the 2 km corridor and the results from the subsea corridor survey [Ref 9]):

- Required depth of cover for Trawl Zone (mobile gear) is 1.00 m.
- Required depth of cover for Fishing Zones (fixed gear) is 0.25 m.
- Due to potential changes in fishing methods, and trawling gear development, for water depth up to 400 m, a conservative cover of 1.00 m will be used to protect from all potential fishing activities.
- Required depth of cover for Anchor Drags is 1.5 m for water depths up to 75 m.
- Design Sub-gouge Depth is 0.25 m (depth between top of cable and bottom of ice keel).

- Sand Wave Amplitude is 2.0 m. The unpredictable sand movement can leave the cable exposed, creating undesirable free spans or burying the cable much deeper than expected affecting its thermal.
- 1,000 year pack ice gouge depth is 1.7 m.
- Approximately 430 m of HDD lined boreholes at Newfoundland landfall point will protect the cable up to approximately 23 m water depth.
- Approximately 1100 m of HDD lined boreholes at Nova Scotia landfall point will protect the cable up to approximately 12 m water depth.

Table 1 below summarizes the length of cable for the recommended cover depth. A Protection Risk Acceptance Strategy is being developed to see if lower than target burial requirements in certain segments of the cable (due to unexpected seabed properties) can be accepted instead of remedial rock dumping without affecting the "Availability " target of the subsea cables.

Depth of Burial to Top of Cable (m)	Length of recommended Cover Depth (Km)
0	58
1	92
1.5	12
1.95	3

Table 1: Trenching Depths to Top of Cable

2.5 Landfall Design

NSPML considered several landfall locations in both provinces and conducted corresponding land surveys [Ref 3] and offshore surveys [Ref 9].Cape Ray in Newfoundland and Point Aconi in Nova Scotia have been chosen as locations for building the landfall assets.

NSPML also considered several options and conducted corresponding feasibility studies for the landfall design:

- Trenched LandFall [Ref 5]
- Microtunneling [Ref 4]
- Horizontal Directional Drilling (HDD) [Ref 18]

HDD method was found to be the most technically, economically and environmentally feasible method of constructing the landfall points. HDD also allowed NSPML to avoid the nearshore area at Point Aconi in response to fish harvester concerns related to a trenched landfall. The Cape Ray NL HDD installation has an approximate length of 430 m and subsea exit point at 23 m water depth. Point Aconi NS HDD installation has an approximate length

of 1100 m and subsea exit point at 12m water depth. Refer to Drawings number M 60000 5 300 03 001 & M 60000 5 300 03 001 in Appendix A for more details. Both length and water depth are well within the achievable HDD construction techniques available today.

A conceptual HDD design was developed in the feasibility study. The design took into consideration geometrical, environmental, geological, analytical and installation factors. Figures 2 & 3 below show the conceptual design for each landfall point.

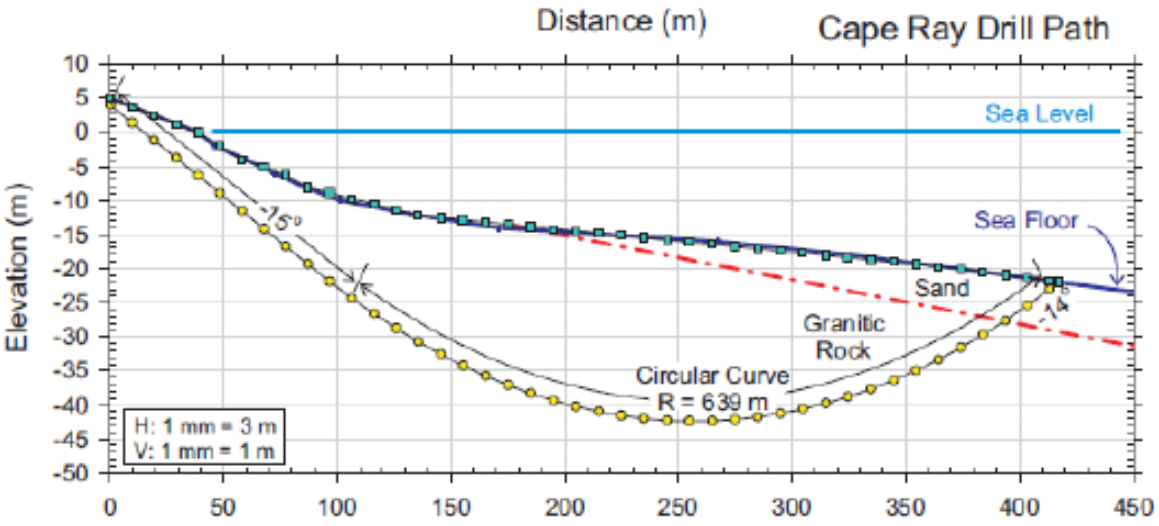

Figure 2: Cape Ray NL HDD Conceptual Design

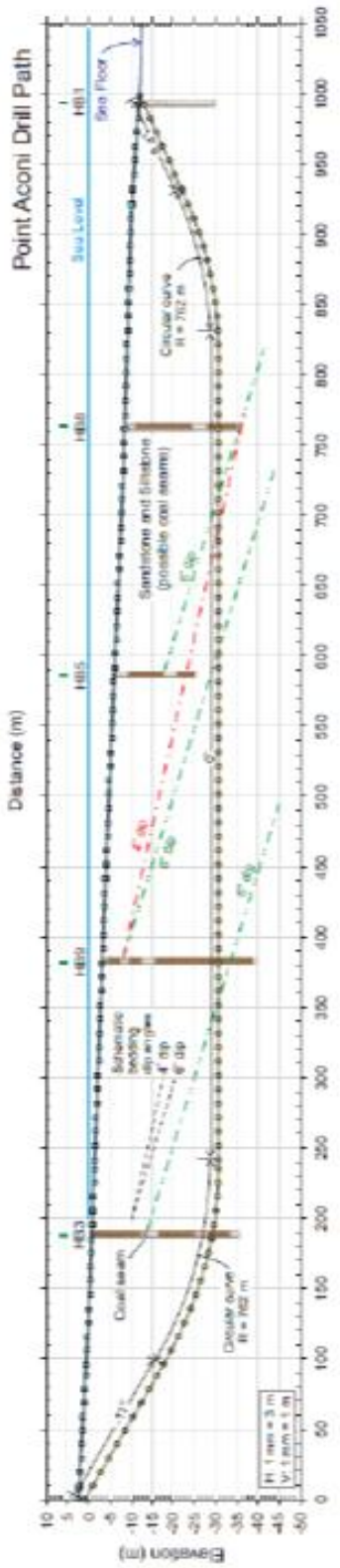

Figure 3: Point Aconi NS HDD Conceptual Design

The final HDD design will be developed during the detailed engineering phase in consultation with the cable contractor. A geotechnical program will be conducted in consultation with the HDD designer; the program will analyze the alignment route at regular intervals to specific depths by a sequence of sea based vertical boreholes, land based inclined borehole and test pits. The testing regime will capture soil and rock properties and influential parameters including but not limited to, compressive strength, point load, permeability, conductivity and abrasion of soil on a range of samples taken from the retrieved rock cores and soil samples.

Appendix A
to Maritime Link - Basis of Design
Part B - Marine Assets

DRAWINGS

Drawings

Drawing Number	Title
M 20000 5 300 03 001	CAST subsea cable corridor and existing cables
M 60000 5 300 03 001	HDD Site overview Point Aconi
M 60000 5 300 03 002	HDD Site overview Cape Ray

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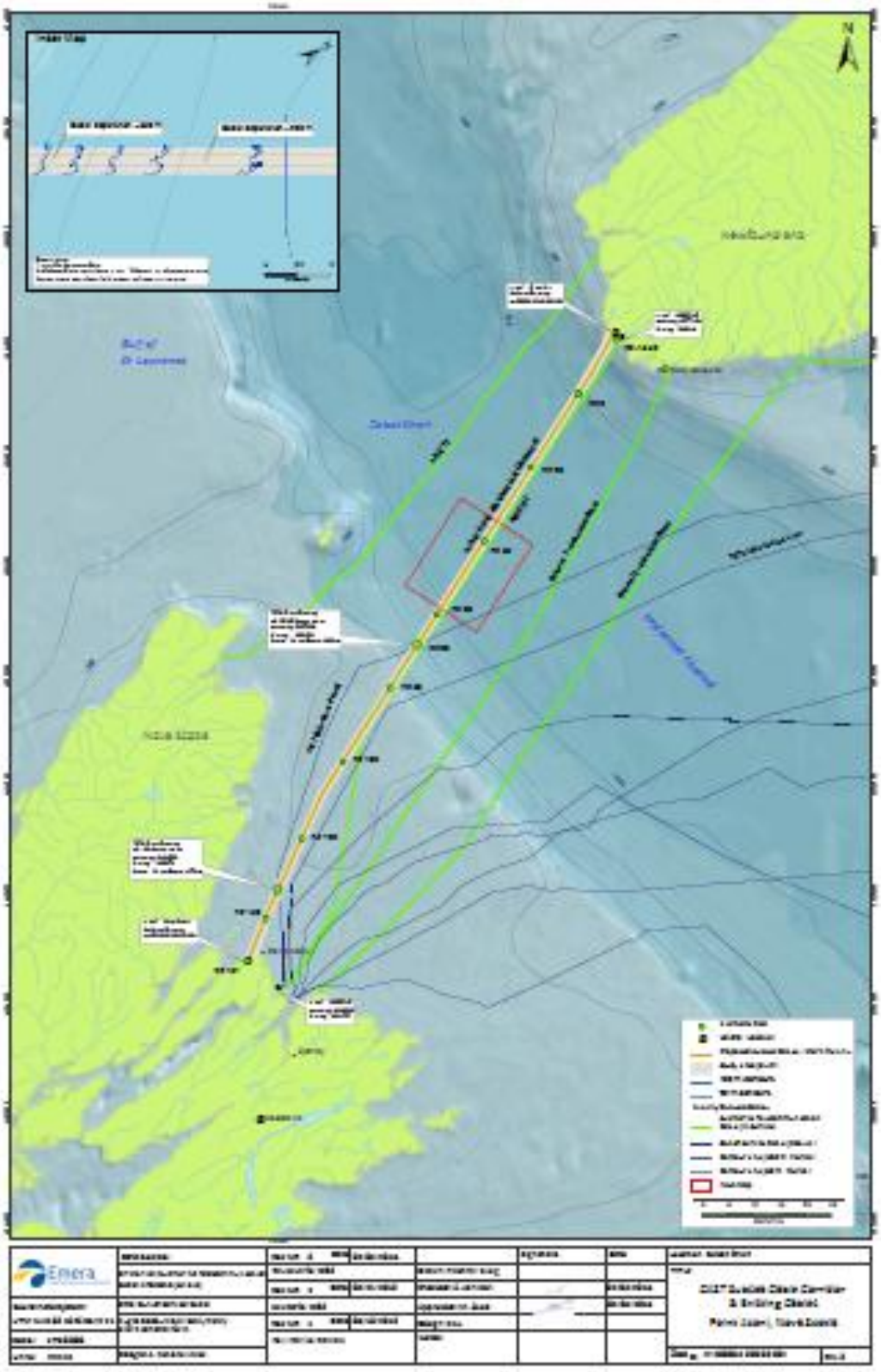

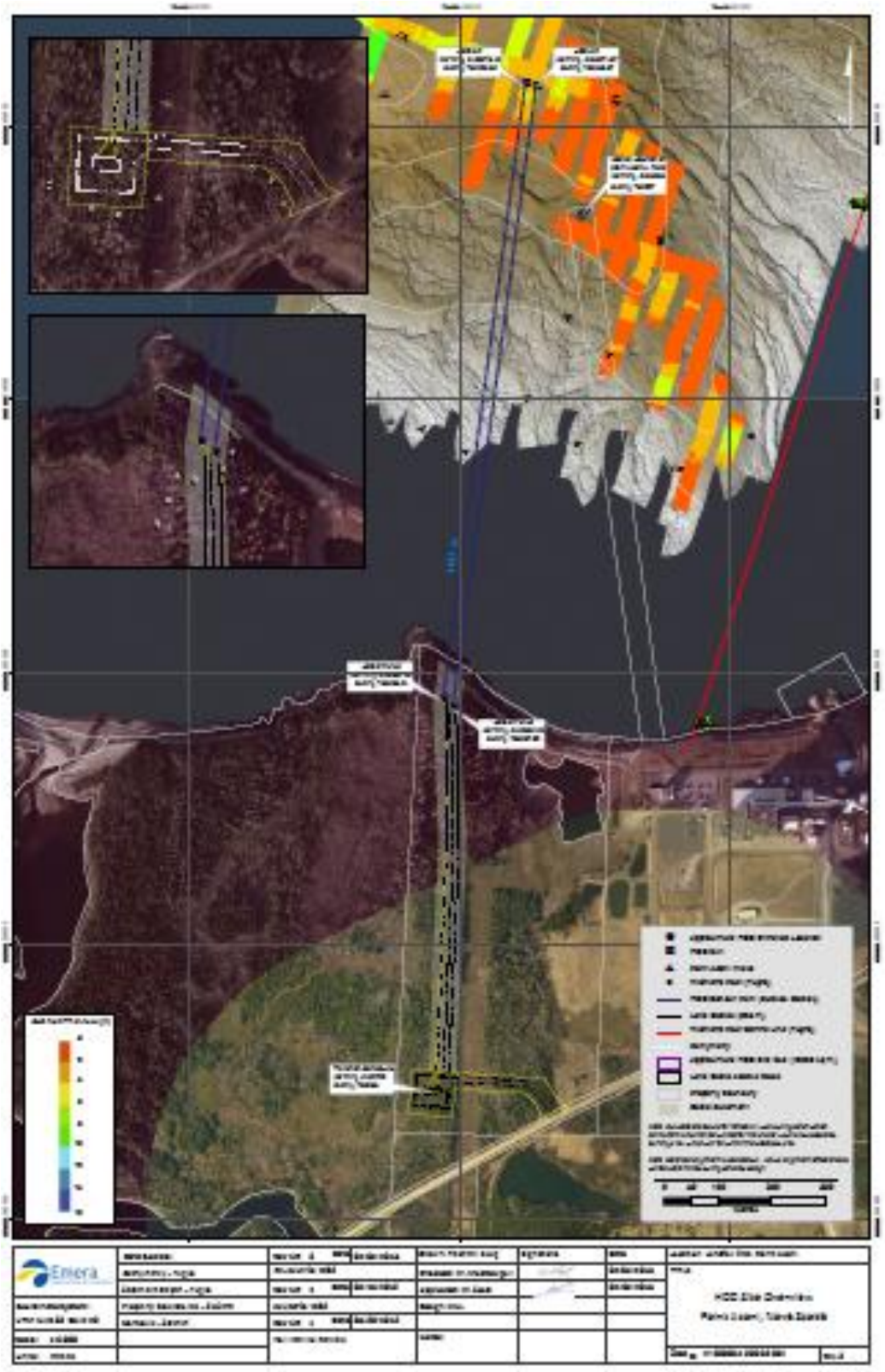

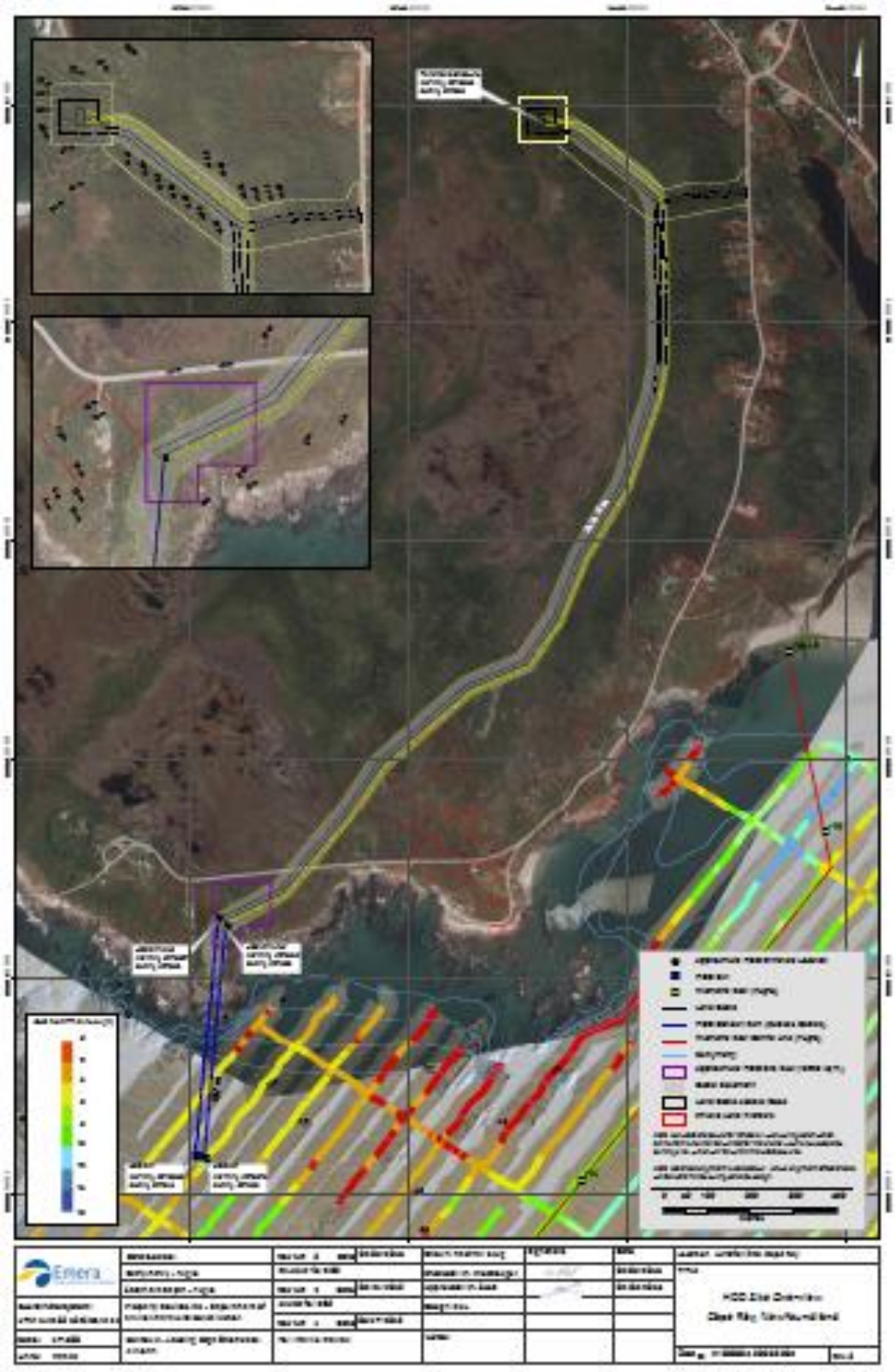

MARITIME LINK - JOINT DEVELOPMENT AGREEMENT

SCHEDULE 2

COST ACCOUNTING PROTOCOL

COST ACCOUNTING PROTOCOL

1.0 INTRODUCTION

1.1 Purpose of Protocol - The purpose of this Protocol is to set forth certain principles and guidelines that the Parties have agreed shall be adhered to and followed for the purposes of determining the Capital Costs incurred and to be incurred to carry out the Development Activities, including, for greater certainty, Previously Incurred Costs and Pre-CSED Costs.

1.2 Protocol Updates - The Parties shall review this Protocol during the course of the ML Project, and may make mutually agreed amendments from time to time to reflect current circumstances, in accordance with the principles and guidelines contained herein.

1.3 Application to Affiliates - Each Party shall ensure compliance by its Affiliates with the requirements of this Protocol.

2.0 DEFINITIONS

In this Protocol:

"**Accounting Principles**" means the generally accepted set of rules, conventions, standards and procedures for reporting financial information used by a Party to compile its financial statements, including Canadian GAAP and US GAAP;

"**Articles of Agreement**" means the main body of the Agreement;

"**CAP Governed Entity**" means any of Nalcor and Emera and their respective Affiliates that may incur Capital Costs;

"**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;

"**Lower Churchill Projects**" means the several projects comprised of the design, engineering, construction and commissioning of each of the Muskrat Falls Plant, the Labrador Transmission Assets, the Labrador Island Link and the Maritime Link;

"**Overhead**" means costs incurred by a CAP Governed Entity in support of its business activities generally, including:

(a) indirect labour and associated benefits in service areas such as administration, general accounting, treasury, tax, human resources, payroll, information systems, research, corporate planning and economics, legal counsel, corporate management, risk management, internal audit, health and safety, office services and other similar functions; and

(b) support service costs such as head office lease payments, leasehold improvements, depreciation charges, heat and light, insurance, property tax and maintenance and

similar costs associated with operation and maintenance of support facilities and equipment;

"**Project**" means any of the Lower Churchill Projects;

"**Protocol**" means this Cost Accounting Protocol;

"**Project Team Consultant**" means an individual engaged by a CAP Governed Entity as a consultant who:

(g) provides consulting services in a specialized area on an ongoing basis;

(h) is not engaged to perform a specific scope of work or study that will result in a formal report;

(i) is paid pursuant to monthly billings based on hours worked; and

(j) is engaged for a year or more working full time, or part-time on a set work schedule;

"**Third Party**" means a third party provider of goods or services that are part of the Development Activities, but does not include a Project Team Consultant; and

"**Third Party Costs**" means costs incurred relating to goods or services provided by a Third Party in relation to Development Activities, but does not include costs incurred by either Party relating to services provided by Third Parties in connection with the NS Regulatory Application, including the Compliance Filing, or any other application to the UARB.

3.0 APPLICATION OF ACCOUNTING PRINCIPLES

3.1 General - This Protocol governs the eligibility and allocation of costs as Capital Costs under the Agreement. It does not prescribe what costs are allowable for capitalization under the Accounting Principles used by either Party. Each Party is solely responsible for determining the accounting treatment of costs under its own Accounting Principles.

3.2 Recording of Costs - Each CAP Governed Entity shall ensure that its accounting records relating to Capital Costs contain adequate information to permit compliance with the CAP Governed Entity's Accounting Principles. To facilitate this, each CAP Governed Entity shall record costs separately in the following categories:

(a) Third Party Costs - goods and services;

(b) costs of financial, legal and other professional advisors;

(c) internal labour and equipment;

(d) internal Overhead allocation;

(e) Financing Costs - equity component of AFUDC;

(f) Financing Costs - debt component; and

(g) other costs.

3.3 Special Requirements - Each CAP Governed Entity shall use commercially reasonable efforts to provide any Party with all information it needs to prepare its accounting records in accordance with its Accounting Principles. If such efforts require the CAP Governed Entity to incur additional costs to support compliance with the Party's Accounting Principles, those costs shall be borne by the Party requesting the reporting or record keeping change.

4.0 CAPITAL COSTS

4.1 Qualification as Capital Costs - Subject to **Section 4.2**, all costs incurred by a CAP Governed Entity that are (or were, in the case of costs incurred prior to the JDA Effective Date):

(a) provided for in an Approved Budget and AFE, or, in the case of costs incurred prior to the JDA Effective Date, in a budget approved by the JDC-ML;

(b) properly incurred in connection with the Development Activities;

(c) authorized at the appropriate level of approval for expenditures in accordance with the Project Policies; and

(d) recorded and, where appropriate, allocated in accordance with this Protocol,

constitute Capital Costs for the purposes of the Agreement.

4.2 Exclusions - For greater certainty, (i) Financing Costs, and (ii) internal costs of the Parties referred to in **Section 3.8** of the Articles of Agreement, are not Capital Costs.

4.3 Examples of Capital Costs - If qualified under **Section 4.1** and not excluded under **Section 4.2**, the following types of costs constitute Capital Costs:

(a) costs associated with goods or services received from a Third Party;

(b) internal direct labour costs including salary and benefits costs, including:

(i) engineering employee costs;

(ii) project management employee costs;

(iii) costs of Project Team Consultants; and

(iv) internal support labour costs (e.g. legal);

(c) Overhead incurred in support of Development Activities, determined based on actual costs incurred and either allocated to the ML Project in accordance with the cost allocation principles contained in this Protocol, or charged directly to the ML

Project, as appropriate and consistent with the CAP Governed Entities' respective corporate overhead allocation policies;

(d) costs incurred in connection with agreements with aboriginal groups to permit the ML Project to proceed; and

(e) costs incurred in connection with the environmental assessment and approval process for the ML Project.

The foregoing list is illustrative and not intended to exclude other types of costs from treatment as Capital Costs that meet the criteria set out in **Section 4.1** and are not excluded under **Section 4.2**.

4.4 Reporting - Capital Costs shall be reported on an accrual basis such that reported amounts include verified costs for which the CAP Governed Entity has been invoiced and estimates of costs incurred which have not yet been invoiced, but for which the CAP Governed Entity has legal liability.

5.0 THIRD PARTY PRE-CSED COSTS

5.1 Tracking - Third Party Pre-CSED Costs shall be recorded and tracked separately by each Party. Each Party shall provide details of its Third Party Pre-CSED Costs incurred as reasonably requested from time to time by the other Party.

5.2 Cost Sharing - Notwithstanding any other provision of this Agreement, neither Party will be liable to reimburse the other pursuant to Section 8.1(b), 8.2(b)(ii) or 8.2(e) of the Articles of Agreement in respect of any Third Party Pre-CSED Costs that are not qualified Capital Costs under **Section 4.1** of this Protocol.

5.3 Payment - Reimbursement of Third Party Pre-CSED Costs shall be computed and payable based on Third Party Pre-CSED Costs that have been recorded and paid in accordance with a verified invoice from the Third Party.

6.0 COST ALLOCATION PRINCIPLES AND METHODOLOGY

6.1 General - Each CAP Governed Entity shall adopt and follow a methodology for recording and allocating Capital Costs that is consistent with the principles, guidelines and requirements set forth in this **Section 6.0**, having regard to Applicable Law and the requirements of applicable Authorized Authorities.

6.2 Objective of Allocation - Proper allocation of costs among the Lower Churchill Projects that derive benefit is essential to appropriate financial measurement and reporting by the Parties. The allocation methodology applied must result in appropriate capital valuation of each Project for accounting, financial reporting and economic regulatory purposes, and provide clear demonstration of appropriate costs charged to each Project.

6.3 Allocation of Costs - Consistent with the matching concept, costs should be allocated to an object based on a "cause and effect" relationship where the cost is allocated to whatever causes or drives the cost. If the driver of a cost cannot be identified, or identified easily, then the cost should be allocated to the appropriate objects in a fair and equitable manner.

6.4 Allocation Process - Allocation is the process of assigning a single cost to more than one cost object. There are three aspects of cost allocation: (i) choosing the object of costing, (ii) choosing and accumulating the costs that relate to the object of costing, and (iii) choosing an appropriate method of allocating the cost to the object. The objectives of cost allocation require that the allocation:

(a) must have a purpose and be relevant, meaning that the cost should be allocated;

(b) should be equitable, which means that a service was performed, the recipient received a benefit from it, and the cost was reasonable;

(c) should be identifiable or traceable; and

(d) should be supported by a methodology that complies with the applicable Accounting Principles and takes into account regulatory requirements.

6.5 Guiding Principles - A CAP Governed Entity's cost allocation methodology should be:

(a) fair and equitable;

(b) easy to administer and understand;

(c) applied systematically and consistently;

(d) changed only when there is a fundamental change in the delivery and/or application of the service associated with the costs being allocated;

(e) dynamic and flexible to ensure alignment with the matching concept;

(f) accommodate inclusion of new projects sharing a benefit or deriving a specific benefit from the service to which the allocated costs pertain; and

(g) subject to due diligence review pursuant to **Section 6.8**.

6.6 Principles of Application of Allocation Methodology

(a) Costs should be allocated based on factors that most fairly and accurately allocate costs to the drivers of those costs.

(b) The allocation methodology should identify a specific charge to a Project where possible or, where not possible, facilitate cost allocation to that Project.

(c) Cost allocation can be achieved by applying one or more of the following application principles:

(i) *Direct* - Whenever possible, costs directly related to a specific Project should be directly charged to that Project.

(ii) *Availability* - Fixed costs of a service available to more than one Project on an equal basis should be allocated equally to the Projects that derive equal benefit, where a Project is deemed to benefit equally if the service is made available to it, whether the service is used or not.

(iii) *Usage* - Variable costs of a service available to more than one Project should be allocated to Projects based on their usage of the service.

(iv) *Proration* - A proportionate allocation could use financial or volumetric factors representing the magnitude of the Project, acting as a proxy for the amount of effort required to manage or support that Project. For example the annual budget of each Project could form the basis of a proportionate allocation, adjusted periodically, using actual cost as the basis of allocation, if the variance is significant enough to warrant such an adjustment.

(v) *Agreed Split* - Where the amount of service or activity is not material, a reasonable predetermined split should be mutually agreed and applied.

6.7 Identification and Documentation - Any CAP Governed Entity may identify costs to be allocated. Once the need is identified the mechanics of the allocation shall be developed in accordance with this Protocol. The following shall be documented:

(a) identification of the object of the cost;

(b) the source of the cost to be allocated;

(c) the rationale for allocation;

(d) the determination of how much is allocated and frequency of allocation; and

(e) a process for performing periodic due diligence reviews pursuant to **Section 6.8**.

6.8 Due Diligence Process - The foregoing allocation application rules are designed to charge each Project with costs that are allocated based on appropriate cost drivers. To validate that the methodology achieves fair and equitable allocations, the Parties shall carry out periodic reviews to revalidate the factors and agreed cost splits used in allocating costs. Reviews will be undertaken by collecting appropriate statistics to assess the cost allocations to each Project in the context of appropriate cost drivers.

6.9 Adjustments - Where an inequitable allocation is identified, a one-time adjustment shall be made to correct the inequity and the particular application mechanics shall be refined to minimize the probability of reoccurrence.

7.0 DISPUTES

Any Dispute relating to a Party's compliance with this Cost Accounting Protocol shall be resolved as a Specified Dispute.

MARITIME LINK - JOINT DEVELOPMENT AGREEMENT

SCHEDULE 3

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

MARITIME LINK - JOINT DEVELOPMENT AGREEMENT

SCHEDULE 4

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF [NAME OF] AGREEMENT

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

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

AMONG:

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

- or -

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

- and -

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

- and -

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

- or -

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

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

WHEREAS:

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

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

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

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

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

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

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

"**Assigned Agreement**" has the meaning set forth in the recitals;

"**Assignee**" means _____, an Affiliate of the Assignor;

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

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

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

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

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

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

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

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

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

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

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

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

(a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;

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

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

(c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

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

(e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

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

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

"**NL Crown**" means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

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

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

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

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

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

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

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

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

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

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

1.2 Construction of Agreement

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

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

(b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.

(c) "Including" - The word "including", when used in this Agreement, means "including without limitation".

(d) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.

(e) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.

(f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

(g) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.

(h) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

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

ARTICLE 2
ASSIGNMENT

2.1 Assignment to Affiliate

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

2.2 Assumption of Liabilities

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

2.3 Limitations on Assignment / Assumption

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

(a) ....

(b) ....

2.4 Confirmation of Status of Assigned Agreement

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

2.5 Assignor to Remain Liable

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

2.6 [Nalcor/Emera] Defaults

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

(a) [Nalcor/Emera] ceases to carry on all or substantially all of its business or, except as permitted under the Assigned Agreement, transfers all or substantially all of its undertaking and assets; or

(b) an Insolvency Event occurs with respect to [Nalcor/Emera].

2.7 Acknowledgement of Consenting Party

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

2.8 Supplies and Payments Exclusive of Taxes

(a) Payment of Taxes – Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.

(b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:

(i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and

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

2.9 Determination of Value for Tax Compliance Purposes

(a) Subject to the right of final determination as provided under **Section 2.9(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.

(b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.10 Invoicing

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

(a) the HST registration number of the supplier;

(b) the subtotal of all HST taxable supplies;

(c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and

(d) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.

2.11 Payment and Offset

(a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.

(b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.12 HST Registration Status

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

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

2.13 [•]

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

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Assignor and Assignee Representations and Warranties

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

(a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary [corporate] action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

(d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

(e) there are **[**no Legal Proceedings **NTD: or set out Legal Proceedings, if any.]** pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

(f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and **[NTD: set out any required Regulatory Approvals]**;

(g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and

(h) the Assignee is an Affiliate of the Assignor.

ARTICLE 4
DISPUTE RESOLUTION PROCEDURE

4.1 General

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

(b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Assigned Agreement]**

ARTICLE 5
MISCELLANEOUS PROVISIONS

5.1 Notices

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

To Assignor:

[•]

To Assignee:

[•]

To Consenting Party:

[•]

[To Nalcor/Emera:]

[•]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and be confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the

Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Any Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

5.2 Prior Agreements

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

5.3 Counterparts

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

5.4 Expenses of Parties

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

5.5 Announcements

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

5.6 Relationship of the Parties

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

5.7 Further Assurances

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

5.8 Severability

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

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

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

5.11 No Waiver

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

5.12 No Third Party Beneficiaries

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

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as

the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

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

5.15 Successors and Assigns

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

5.16 [Capacity of Nalcor

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

[Remainder of this page intentionally left blank.]

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

Assignor

By: _____
Name:
Title:

By: _____
Name:
Title:

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

Assignee

By: _____
Name:
Title:

By: _____
Name:
Title:

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

Consenting Party

By: _____
Name:
Title:

By: _____
Name:
Title:

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

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

MARITIME LINK - JOINT DEVELOPMENT AGREEMENT

SCHEDULE 5

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 JDA Effective Date, a copy of which is attached hereto as **Appendix A**;

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

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

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

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

"**Expert Determination Procedure**" means the provisions of **Section 6**;

"**General Dispute**" means a Dispute that is not a Specified Dispute;

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

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

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

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

"**Mediation Procedure**" means the provisions of **Section 4**;

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

"**Mediator**" means the mediator appointed pursuant to the Mediation Procedure;

"**Negotiation Procedure**" means the provisions of **Section 3**;

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Section References

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

1.3 Appendix

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

Appendix A - *Commercial Arbitration Code* (Canada)

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 Purpose and Sequence of Dispute Resolution

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

(a) first, by referring the Dispute to negotiation pursuant to the Negotiation Procedure; and

(b) in the case of a General Dispute:

(i) second, by way of mediation pursuant to the Mediation Procedure; and

(ii) third, either:

(A) by arbitration pursuant to the Arbitration Procedure where the Parties agree or are deemed to have agreed to arbitration; or

(B) by litigation, where the Parties do not agree and are not deemed to have agreed to arbitration pursuant to the Arbitration Procedure; or

(c) in the case of a Specified Dispute, second by expert determination in accordance with the Expert Determination Procedure.

2.2 Confidentiality

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

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

2.3 Interim Measures

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

2.4 Parties to Proceedings

(a) For the purposes of this Schedule and any Dispute submitted for resolution hereunder, any of Nalcor Energy and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively, and any of Emera Inc. and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively. When applicable, in this Schedule references to a "Party" are to either such collective, and references to the "Parties" are to both such collectives.

(b) Notwithstanding **Section 2.4(a)**, (i) any Notice given by Nalcor or an Affiliate of Nalcor in connection with this Dispute Resolution Procedure shall be given to Emera Inc., if it is a Party, and to all Affiliates of Emera Inc. that are Parties, and (ii) any Notice given by Emera or an Affiliate of Emera in connection with this Dispute Resolution Procedure shall be given to Nalcor Energy, if it is a Party, and to all Affiliates of Nalcor Energy that are Parties.

2.5 Mediator or Arbitrator as Witness

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

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

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

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

3.2 Reservation of Rights

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

3.3 Failure of Negotiations

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

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

(a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the "**Requesting Party**"), by Notice to the other Party given within five Business Days after expiry of the period set out in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a "**Mediation Notice**") containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.

(b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.

(c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:

(i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;

(ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;

(iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;

(iv) either Party gives Notice to the other Party that it terminates the mediation;

(v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;

(vi) **Section 4.3(d)** applies; or

(vii) the Dispute is settled as provided in **Section 4.4**.

(d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the "**Mediation Response**") to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 Appointment of Mediator

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

4.3 Mediation Process

(a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.

(b) The location of the mediation will be St. John's, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.

(c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.

(d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.

(e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally

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

4.4 Reservation of Rights

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

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

(a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3**:

(i) either Party (the "**Notifying Party**") may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Party (the "**Notified Party**") of such submission (an "**Arbitration Notice**"); or

(ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, to proceed with resolution of the General Dispute pursuant to Section **2.1(b)(ii)(B)**.

(b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.

(c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.

(d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.

(e) Notwithstanding **Sections 5.1(b)**, **5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.

(f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by

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

5.2 Provisions Relating to the Arbitration Act and the Code

(a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.

(b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.

(c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the "arbitration agreement".

(d) A reference in the Code to "a court or other authority specified in article 6", will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.

(e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.

(f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.

(g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.

(h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have both agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.

(i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 Appointment of Tribunal

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

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

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

5.4 Arbitration by Single Arbitrator

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

5.5 Procedure

(a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.

(b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.

(c) If the Parties initiate multiple arbitration proceedings under the Agreement and other Formal Agreements, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may, with the written consent of all Parties in all such proceedings, be consolidated into a single arbitration proceeding.

(d) The Parties may agree as to the manner in which the Tribunal shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing such agreement within 20 Business Days from the date of selection or appointment of the Tribunal, the Tribunal shall promptly and expeditiously conduct the arbitration proceedings in accordance with the Code. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.

(e) Nothing in this **Section 5** will prevent either Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with the Arbitration Procedure, or to prevent manifestly unfair or unequal treatment of either Party.

(f) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Schedule or of the Code.

5.6 Awards

(a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.

(b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.

(c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.

(d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.

(e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus three percent per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is paid in full.

(f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 Settlement

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

SECTION 6 – EXPERT DETERMINATION PROCEDURE

6.1 Referral for Expert Determination

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

6.2 Qualifications of Independent Expert

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

(a) independent of each of the Parties;

(b) of national or international standing;

(c) well qualified by education, technical training and experience, and hold the appropriate professional qualifications, to determine the matters in issue in the Specified Dispute; and

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

6.3 Selection of the Independent Expert

(a) Within 10 Business Days after delivery of the Referral Notice, each Party shall deliver to the other Party, in a simultaneous exchange, a list of the names of five Persons (ranked 1 - 5 in order of preference, 5 being that Party's first preference) who are acceptable to the Party to act as the Independent Expert. If one Person only is named in both lists, that Person shall be the Independent Expert to determine the Specified Dispute. If more than one Person is named in both lists, the Person with the highest total numerical ranking, determined by adding the rankings from both lists, shall be the Independent Expert to determine the Specified Dispute. In the event of a tie in the rankings, the Person to be the Independent Expert shall be selected by lot from among those of highest equal rank.

(b) If the Parties fail to select an Independent Expert from the initial lists provided pursuant to **Section 6.3(a)**, the process under **Section 6.3(a)** shall be repeated with a second list of five names from each Party, except that the Parties shall exchange lists within five Business Days after the end of the 10 Business Day period under **Section 6.3(a)**.

(c) If the Parties fail to select an Independent Expert pursuant to **Section 6.3(a)** or **6.3(b)** or otherwise within 15 Business Days after the Referral Notice is given, within a further period of five Business Days after the end of such 15 day period the Parties shall jointly request the President of ADR Chambers in Toronto, Ontario or his or her designate (the "**Delegate**") to appoint the Independent Expert from a list submitted by the Parties with the request. Each Party may nominate up to three proposed Independent Experts for inclusion on the list. The Parties shall not advise the Delegate which Party nominated a particular nominee. Each Party shall be responsible for one-half of the costs of the Delegate.

6.4 Terms of Reference

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

6.5 Information Provided to Independent Expert

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

(a) a copy of the Agreement, including the Schedules;

(b) copies of or full access to all documents relevant to the Specified Dispute to be determined by the Independent Expert; and

(c) other data and reports as may be mutually agreed by the Parties.

6.6 Dispute Context

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

6.7 No *ex parte* Communication

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

(a) with the approval of both Parties;

(b) as provided by this **Section 6**; or

(c) to address strictly administrative matters.

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

6.8 Initial Meeting and Joint Presentations by the Parties

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

6.9 Written Submissions and Responses

(a) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after the Initial Meeting, each Party shall provide to the Independent Expert a written submission (a "**Submission**") respecting its interpretation and evaluation of the Specified Dispute.

(b) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after receipt of the other Party's Submission, each Party shall have the opportunity to provide comments on the other Party's Submission by written submissions (a "**Response**") provided to the Independent Expert and the other Party.

(c) The Parties shall provide any Information deemed necessary by the Independent Expert to complete the evaluation required pursuant to this **Section 6**.

(d) A Party that fails to submit a Submission or a Response to the Independent Expert within the time allowed by this **Section 6.9** will be deemed to have waived its right to make a Submission or Response, as the case may be.

6.10 Independent Expert Clarifications

(a) Following receipt of the Submissions and Responses, the Independent Expert may, at its discretion, seek any number of clarifications with respect to any aspect of either Party's Submission or Response. Such requests for clarifications shall be made by the Independent Expert in writing and the clarifications by the Parties shall be made in writing as requested by the Independent Expert, provided that the other Party shall be provided with a copy of such requests and clarifications.

(b) The purpose of such clarifications will be to allow the Independent Expert to fully understand the technical and/or financial basis and methodologies used in the preparation of the Submission and Response of each Party, it being understood that each Party's Submission and Response will be the primary basis upon which the Independent Expert shall make its determination.

(c) All requests for clarifications and all questions in relation thereto will be initiated or posed exclusively by the Independent Expert to the Party from whom clarification is sought as seen fit by the Independent Expert, in its sole discretion, and free of any

interruption or interjection by the other Party. Neither Party will have any right to cross-examine the other Party in respect of such Party's Submission or Response or its responses to the Independent Expert pursuant to this **Section 6.10**.

6.11 Method of Evaluation

(a) The Independent Expert's assessment shall include the method of evaluation elements set out in the Dispute Context.

(b) The Independent Expert's assessment, including its economic model, cash flows and analysis, if any, will be made available to the Parties.

6.12 Decision and Presentation of Report

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

6.13 Costs of Expert Determination

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

6.14 Effect of Determination

(a) The Independent Expert's determination pursuant to this **Section 6** will be final and binding upon the Parties and not reviewable by a court for any reason whatsoever.

(b) The Independent Expert is not an arbitrator of the Specified Dispute and is deemed not to be acting in an arbitral capacity. The Independent Expert's determination pursuant to this **Section 6** is not an arbitration under the Arbitration Act or any other federal or provincial legislation.

6.15 Settlement

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

Appendix A
to Dispute Resolution Procedure

COMMERCIAL ARBITRATION CODE

Appendix A
COMMERCIAL ARBITRATION CODE

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

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

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

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

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1
SCOPE OF APPLICATION

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

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

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

ARTICLE 2
DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this *Code:*

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

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

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

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

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

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

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

(1) Unless otherwise agreed by the parties:

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

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

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

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

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

ARTICLE 5
EXTENT OF COURT INTERVENTION

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

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

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

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

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

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

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

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

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

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(c) a party fails to act as required under such procedure, or

(d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(e) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

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

ARTICLE 12
GROUNDS FOR CHALLENGE

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

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

ARTICLE 13
CHALLENGE PROCEDURE

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

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

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

ARTICLE 14
FAILURE OR IMPOSSIBILITY TO ACT

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

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

ARTICLE 15
APPOINTMENT OF SUBSTITUTE ARBITRATOR

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

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

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

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

ARTICLE 17
POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

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

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18
EQUAL TREATMENT OF PARTIES

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

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

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

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

ARTICLE 20
PLACE OF ARBITRATION

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

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

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

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

ARTICLE 22
LANGUAGE

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

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

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

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

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

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

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

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

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

ARTICLE 25
DEFAULT OF A PARTY

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

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

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

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

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

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

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

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

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

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

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

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28
RULES APPLICABLE TO SUBSTANCE OF DISPUTE

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

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

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

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

ARTICLE 29
DECISION-MAKING BY PANEL OF ARBITRATORS

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

ARTICLE 30
SETTLEMENT

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

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

ARTICLE 31
FORM AND CONTENTS OF AWARD

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

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

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

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

ARTICLE 32
TERMINATION OF PROCEEDINGS

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

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

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34
APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

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

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

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

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code;* or

(b) the court finds that:

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

(ii) the award is in conflict with the public policy of *Canada.*

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35
RECOGNITION AND ENFORCEMENT

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

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

ARTICLE 36
GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

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

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

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

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

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

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

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

(b) if the court finds that:

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

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

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