

**NOVA SCOTIA POWER INCORPORATED**

and

**NSP MARITIME LINK INCORPORATED**

**AGENCY AND SERVICE AGREEMENT**

January *28*, 2013

## TABLE OF CONTENTS

<b>ARTICLE 1 INTERPRETATION.....</b>	<b>2</b>
1.1    Definitions .....	2
1.2    Construction of Agreement.....	13
1.3    Conflicts between Parts of Agreement .....	15
1.4    Applicable Law and Submission to Jurisdiction.....	15
1.5    Schedules.....	15
<b>ARTICLE 2 NOVA SCOTIA BLOCK AND GHG CREDITS.....</b>	<b>16</b>
2.1    Nova Scotia Block .....	16
2.2    Consent of NSPML Required .....	16
2.3    Greenhouse Gas Credits .....	16
<b>ARTICLE 3 TRANSMISSION FACILITATION SERVICE .....</b>	<b>17</b>
3.1    Provision of Transmission Facilitation Service .....	17
3.2    NS Power Responsibilities and Covenants .....	18
3.3    Costs associated with the Transmission Facilitation Service .....	18
3.4    Woodbine Substation.....	19
3.5    NSPML Responsibilities and Covenants .....	19
<b>ARTICLE 4 MARITIME LINK SYSTEM OPERATIONS .....</b>	<b>19</b>
4.1    Interconnection Operators Agreement.....	19
4.2    Maritime Link Transmission Service Agreements .....	19
4.3    System, Capital and Maintenance Costs .....	20
<b>ARTICLE 5 PURCHASE OF ENERGY AND/ OR CAPACITY .....</b>	<b>20</b>
5.1    Purchase of Energy and/ or Capacity from Nalcor .....	20
<b>ARTICLE 6 .....</b>	<b>21</b>
<b>PURCHASE OF NB BACKSTOP ENERGY .....</b>	<b>21</b>
6.1    Purchase of NB Backstop Energy.....	21
<b>ARTICLE 7 MARITIME LINK AND PROJECT COST ASSESSMENT APPROVALS .....</b>	<b>21</b>
7.1    Project Application .....	21
7.2    Project Cost Assessment .....	21
<b>ARTICLE 8 PROVISION OF INFORMATION .....</b>	<b>22</b>
8.1    Provision of Information.....	22

<b>ARTICLE 9 INVOICING AND PAYMENT.....</b>	<b>22</b>
9.1 Invoices.....	22
9.2 Disputed Amounts.....	22
9.3 Time and Method of Payment .....	22
9.4 Effect of Payment .....	22
9.5 Resolution of Objections .....	23
9.6 Overpayments .....	23
9.7 Interest on Overdue Amounts.....	23
9.8 Waiver of Unbilled Charges.....	23
9.9 Records and Audits.....	23
<b>ARTICLE 10 TAXES.....</b>	<b>24</b>
10.1 Supplies and Payments Exclusive of Taxes.....	24
10.2 Determination of Value for Tax Compliance Purposes .....	25
10.3 Invoicing.....	26
10.4 Payment and Offset.....	26
10.5 HST Registration Status and Residency .....	26
10.6 Cooperation to Minimize Taxes.....	27
10.7 Additional Tax Disclosure .....	27
10.8 Prohibited Tax Disclosure.....	27
10.9 Withholding Tax.....	28
10.10 Tax Indemnity .....	28
10.11 Additional Tax Indemnity .....	28
10.12 Assignment – Tax Requirements.....	29
<b>ARTICLE 11 TERM AND TERMINATION.....</b>	<b>29</b>
11.1 Term.....	29
11.2 Termination of Agreement.....	29
11.3 Effect of Termination.....	29
<b>ARTICLE 12 DEFAULT AND REMEDIES .....</b>	<b>30</b>
12.1 NS Power Events of Default.....	30
12.2 NSPML Remedies upon NS Power Event of Default.....	31
12.3 NSPML Events of Default.....	32
12.4 NS Power Remedies upon NSPML Event of Default.....	32
<b>ARTICLE 13 FORCE MAJEURE.....</b>	<b>33</b>
13.1 Force Majeure – Nova Scotia Block.....	33
13.2 Force Majeure – Transmission Facilitation Service .....	33
13.3 Failure to Pay Project Cost Assessment Not Excusable.....	33
<b>ARTICLE 14 LIABILITY AND INDEMNITY.....</b>	<b>34</b>

14.1	NSPML Indemnity .....	34
14.2	NS Power Indemnity .....	34
14.3	Indemnification Procedure.....	34
14.4	Insurer Approval .....	36
<b>ARTICLE 15 LIMITATION OF DAMAGES .....</b>		<b>36</b>
15.1	Limitations and Indemnities Effective Regardless of Cause of Damages.....	36
15.2	Insurance Proceeds .....	37
<b>ARTICLE 16 CONFIDENTIALITY .....</b>		<b>37</b>
16.1	Non-Disclosure Agreement .....	37
<b>ARTICLE 17 ASSIGNMENT AND CHANGE OF CONTROL .....</b>		<b>37</b>
17.1	NSPML Assignment Rights.....	37
17.2	NS Power Assignment Rights.....	38
<b>ARTICLE 18 DISPUTE RESOLUTION.....</b>		<b>38</b>
18.1	General .....	38
18.2	Procedure for Inter-Party Claims.....	38
<b>ARTICLE 19 REPRESENTATIONS, WARRANTIES AND COVENANTS.....</b>		<b>39</b>
19.1	NSPML Representations and Warranties .....	39
19.2	NS Power Representations and Warranties .....	40
<b>ARTICLE 20 MISCELLANEOUS PROVISIONS.....</b>		<b>41</b>
20.1	Notices.....	41
20.2	Prior Agreements.....	42
20.3	Counterparts.....	42
20.4	Expenses of Parties.....	42
20.5	Announcements .....	42
20.6	Relationship of the Parties .....	42
20.7	Further Assurances.....	43
20.8	Severability .....	43
20.9	Time of the Essence.....	43
20.10	Amendments .....	43
20.11	No Waiver .....	43
20.12	No Third Party Beneficiaries .....	43
20.13	Survival .....	43
20.14	Successors and Assigns.....	44

**Schedules:**

- Schedule 1 - Non-Disclosure Agreement
- Schedule 2 - Form of Assignment Agreement
- Schedule 3 - Dispute Resolution Procedure

## AGENCY AND SERVICE AGREEMENT

THIS AGENCY AND SERVICE AGREEMENT is made effective the 28<sup>th</sup> day of January, 2013 (the "Effective Date")

### BETWEEN:

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

- and -

**NSP MARITIME LINK INCORPORATED**, a Newfoundland and Labrador body corporate, extra-provincially registered under the laws of the Province of Nova Scotia ("NSPML")

### WHEREAS:

- A. Nalcor and Emera have entered into agreements relating to transmission services 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. These agreements include:
- (i) the Maritime Link-Joint Development Agreement, that provides for, among other things, the design, development, and construction of the Maritime Link;
  - (ii) the Energy and Capacity Agreement, that provides for the supply and delivery of power and energy, referred to as the Nova Scotia Block, from Nalcor to Emera; and
  - (iii) the Nova Scotia Transmission Utilization Agreement, that provides for the transmission of Energy and Capacity by Emera, on behalf of Nalcor, through the Province of Nova Scotia by means of a Transmission Facilitation Service;
- B. Emera has assigned to NSPML its rights and obligations under the agreements referred to in A(i), (ii) and (iii) above;
- C. Pursuant to a Backstop Energy Agreement between NSPML and Bayside Power L.P., NSPML is obligated to purchase Energy and/or Capacity purchased by Bayside Power L.P. pursuant to Sections 2.3 or 3.2(b) of the New Brunswick Transmission Utilization Agreement and pursuant to Section 2.5 of the MEPCO Agreement;
- D. Pursuant to the *Maritime Link Act* (Nova Scotia) and its regulations, NSPML, as applicant thereunder, will be deemed to be a "public utility" within the meaning of the *Public Utilities Act* (Nova Scotia) and, following approval of the Maritime Link Project by the UARB, must set an assessment against NS Power for the recovery of all approved Project Costs;

- E. Pursuant to the *Maritime Link Act* (Nova Scotia) and its regulations, NS Power is entitled to recover through its rates any assessment approved by the UARB in respect of the Maritime Link project; and
- F. NSPML and NS Power are entering into this Agreement to provide for the performance of certain obligations under the Energy and Capacity Agreement and the Nova Scotia Transmission Utilization Agreement and to address the payment and responsibility for project costs;

**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:

**"ATC"** has the meaning set forth in the MLTSAs, being the transfer capability remaining in a physical transmission network for further commercial activity over and above already committed uses;

**"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;

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

**"Ancillary Services"** has the meaning set forth in the MLTSAs, being those services that are necessary to support the transmission of Energy and Capacity from resources to loads while maintaining reliable operation of a transmission system in accordance with Good Utility Practice;

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

**"Applicable Tariff Charges"** has the meaning set forth in the NSTUA, being the payments to be made by Nalcor in respect of the transmission of Confirmed NS-NTQ Energy on behalf of Nalcor through Nova Scotia in accordance with the NSTUA;

**"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;

**"Backstop Energy Agreement"** means the agreement of even date herewith between NSPML and Bayside Power L.P.;

**"Business Day"** means any day that is not a Saturday, Sunday or legal holiday recognized in in Halifax Regional Municipality, NS;

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

**"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;

**"Confidential Information"** has the meaning given to such term in the Non-Disclosure Agreement;

**"Confirmed NS-NTQ Energy"** has the meaning set forth in the NSTUA, being the Energy of Nalcor scheduled for transmittal through Nova Scotia pursuant to the Scheduling Protocol of the NSTUA;

**"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);

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

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

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

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

**"Emera"** means Emera Inc., a company incorporated under the laws of the Province of Nova Scotia;

**"Encumbrance"** means any security interest, mortgage, charge, pledge, hypothec, lien, restriction, option, adverse claim, right of others or other encumbrance of any kind, but does not include inchoate statutory liens or trusts;

**"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 providing for the purchase by Emera and the sale by Nalcor of the Nova Scotia Block;

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

**"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;

**“Forgivable Event”** has the meaning set forth in the NSTUA, being a Force Majeure, a Planned Maintenance Period, a Safety Event or an action required to be taken by a party to the NSTUA to comply with the requirements of Good Utility Practice;

**“Formal Agreements”** has the meaning set forth in the NSTUA;

**“GHG Credits”** means greenhouse gas credits or allowances;

**“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;

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

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

“**Indemnified Party**” has the meaning set forth in **Section 14.3(a)**;

“**Indemnitor**” has the meaning set forth in **Section 14.3(a)**;

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

- (a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;
- (b) such Party voluntarily institutes proceedings for its winding-up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Companies Act* (Nova Scotia), 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 *Companies Act* (Nova Scotia), the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or

substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

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

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

**“Interconnected Facilities”** has the meaning set forth in the Interconnection Operators Agreement, being the portions of the Maritime Link from the HVdc converter station in NL to the HVdc converter station in NS (inclusively);

**“Interconnection Operators Agreement”** means the Interconnection Operators Agreement dated July 31, 2012 between Newfoundland and Labrador Hydro and NS Power;

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

**“Labrador-Island Link”** 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;

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

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

**“MLTSAs”** means the Maritime Link (Emera) Transmission Service Agreement dated July 31, 2012 between Nalcor and Emera and the Maritime Link (Nalcor) Transmission Service Agreement dated July 31, 2012 between Nalcor and Emera;

**"ML Transmission Procedures"** has the meaning set forth in the MLTSAs, being any necessary administrative rules and practices required for the administration of transmission service over the Maritime Link;

**"MW"** means megawatt;

**"MWh"** means MW hours;

**"Maritime Link"** or **"ML"** means the transmission facilities to be constructed between the Island Interconnected System and the NS Transmission System in accordance with the ML-JDA, including, for certainty, the extension of and up-grades to the bulk energy transmission system in NL referred to in the ML-JDA as the "Maritime Link NL AC Facilities";

**"Maritime Link Act"** means the *Maritime Link Act (NS)*;

**"Maritime Link Joint Development Agreement"** or **"ML-JDA"** means the agreement dated July 31, 2012 between Nalcor and Emera relating to the development of the Maritime Link;

**"MEPCO Transmission Rights Agreement"** or **"MEPCO Agreement"** means the agreement dated July 31, 2012 between Emera and Nalcor relating to the provision of transmission rights by Emera to Nalcor under certain grandfathered transmission rights granted by the Maine Electric Power Company;

**"NB"** means the Province of New Brunswick;

**"NB Backstop Energy"** means Energy and/ or Capacity that NSPML is obligated to purchase from Bayside Power L.P. pursuant to Section 2.1. of the Backstop Energy Agreement;

**"NB Transmission Utilization Agreement"** or **"NBTUA"** means the agreement dated July 31, 2012 between Emera and Nalcor relating to the provision of Transmission Rights by Emera to Nalcor through NB;

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

**"NL Transmission System"** has the meaning set forth in the MLTSAs, being the transmission facilities located in NL, operating at a voltage of 230 kV or higher;

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

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

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

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

**"NS Power Affiliate Assignee"** means an Affiliate of NS Power to which all or any portion of the NS Power Rights have been assigned in accordance with **Section 17.2**, either directly by NS Power or by any Affiliate of NS Power that was a previous assignee of such NS Power Rights;

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

**"NS Power Facilities"** means all facilities, equipment and other generation and transmission assets owned directly or indirectly by NS Power and required in whole or in part to provide the Transmission Facilitation Service in accordance with the NSTUA;

**"NS Power Firm Point-to-Point Transmission Service"** means the 330 MW Long Term Firm Point-to-Point Transmission Service from the Delivery Point to the NS-NB border to be obtained by NSPI pursuant to the NS OATT in accordance with the NSTUA;

**"NS Power Group"** has the meaning set forth in **Section 14.1**;

**"NS Power Rights"** has the meaning set forth in **Section 17.2(a)**;

**"NS System Operator"** means the NS Power system operator, a functionally separate division of NS Power responsible for the safe and reliable operation of the electricity system in NS, or any successor performing this role;

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

**"NS Transmission Utilization Agreement"** or **"NSTUA"** means the agreement dated July 31, 2012 between Emera and Nalcor relating to the provision of Transmission Rights to Nalcor through NS;

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

**"NSPML Affiliate Assignee"** means an Affiliate of NSPML to which all or any portion of the NSPML Rights have been assigned in accordance with **Section 17.1(a)**, either directly by NSPML or by any Affiliate of NSPML that was a previous assignee of such NSPML Rights;

**"NSPML Default"** has the meaning set forth in **Section 12.3**;

**"NSPML Group"** has the meaning set forth in **Section 14.2**;

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

**"NSTUA Subsequent Term"** has the meaning of "Subsequent Term" set forth in the NSTUA, being a term, if any, commencing on the expiry of the initial term of the ECA, or on the expiry of an immediately preceding subsequent term of the ECA, as the case may be, and

continuing for an agreed upon period of time not to exceed in aggregate the then remaining service life of the Maritime Link;

**"NSTUA Initial Term"** means the Initial Term of NSTUA as that term is defined in the NSTUA;

**"Nalcor"** means Nalcor Energy, a body corporate existing pursuant to the *Energy Corporation Act* (NL) and includes Nalcor Energy's successors and permitted assigns;

**"Nalcor Charges"** has the meaning set forth in **Section 3.1(b)**;

**"Nalcor Maximum Transmission Capacity Level"** means the maximum amount of Energy that may be scheduled by Nalcor in respect of the Transmission Facilitation Service in accordance with the NSTUA;

**"New Taxes"** means:

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

**"Non-Disclosure Agreement"** means the agreement attached as Schedule 1;

**"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 20.1**;

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

**"Nova Scotia Block Delivery Schedule"** means the schedule for the delivery of the Nova Scotia Block by Nalcor to Emera as determined from time to time pursuant to Schedule 5 of the ECA;

**"Nova Scotia Block Force Majeure"** has the meaning of set forth in **Section 13.1**;

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

**"Payee"** has the meaning set forth in **Section 9.1**;

**"Payor"** has the meaning set forth in **Section 9.1**;

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

**"Planned Maintenance Periods"** has the meaning set forth in the NSTUA;

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

**“Project Cost Assessment”** means an assessment against NS Power approved by the NS Utility and Review Board pursuant to section 8 of the Maritime Link Cost Recovery Process Regulations under the *Maritime Link Act (Nova Scotia)*;

**“Reactive Supply and Voltage Control”** has the meaning set forth in the MLTSAs, being the production or absorption of reactive power that may be required in order to maintain transmission voltages within acceptable limits on the Maritime Link and its interconnections with the NL Transmission System and the NS Transmission System;

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

**“Redispatch”** has the meaning set forth in **Section 3.2(d)**;

**“Regular Business Hours”** means 9:00 a.m. through 5:00 p.m. local time on Business Days in Halifax Regional Municipality, NS;

**“Regulations”** means the *Maritime Link Costs Recovery Process Regulations* made under section 6 of the Maritime Link Act;

**“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;

**“Safety Event”** has the meaning set forth in the NSTUA, being an event which causes NS Power to suspend the provision of the Transmission Facilitation Service for the purpose of safeguarding life or property by making Repairs to NS Power Facilities or the NS Transmission System in accordance with Good Utility Practice;

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

**“Scheduling, System Control and Dispatch Service”** has the meaning set forth in the MLTSAs, being those administrative services required to Schedule and coordinate the movement of power across the Maritime Link;

**“Supporting Material”** has the meaning set forth in **Section 9.1**;

**“TTC”** has the meaning set forth in the MLTSAs, being the amount of electrical power that can be moved or transferred reliably from one area to another area of interconnected Transmission Systems by way of all transmissions lines (or paths) between those areas under specified system conditions;

**“Tariff Charges”** means all applicable rates, charges and other amounts payable in accordance with the NS OATT;

**“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**;

**“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 14.1 or 14.2**;

**“Transmission Facilitation Service”** has the meaning set forth in the NSTUA, being the transmission of Energy and Capacity on behalf of Nalcor from the Delivery Point to the NS-NB border;

**“Transmission Facilitation Service Force Majeure”** has the meaning set forth in **Section 13.2**;

**“Transmission Losses”** means the Energy losses on the NS Transmission System associated with the transmission of the Confirmed NS-NTQ Energy, as determined in accordance with Schedule 3 of the NSTUA;

**“Transmission Loss Differential”** means, in respect of any given amount of Confirmed NS-NTQ Energy, the difference between (i) Transmission Losses in respect of such Energy and (ii) transmission losses in respect of such Energy calculated in accordance with the NS OATT;

**“Transmission Loss Factor”** has the meaning set forth in the MLTSAs, being the transmission loss factor determined each month in accordance with Schedule 1 to the MLTSAs

**“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 *Utility and Review Board Act* (Nova Scotia) or any successor performing substantially the same functions;

**“Upgrade”** has the meaning set forth in the NSTUA, being an upgrade to the NS Transmission System related to Nalcor’s additional transmission Capacity requirements, if any, during the supplement term, if any, of the NSTUA;

**“Upgrade Charge”** has the meaning set forth in the NSTUA, being the additional amount payable by Nalcor in accordance with the NSTUA in respect of an Upgrade;

**“Upgrade Notice”** has the meaning set forth in the NSTUA, being an upgrade notice that may be given by Nalcor in respect of the planning and building of an Upgrade as set forth in the NSTUA;

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

**“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;

**“Woodbine Upgrades”** has the meaning set forth in **Section 3.4**.

## **1.2 Construction of Agreement**

- (a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an **“Article”**, **“Section”**, **“Schedule”** or **“Appendix”** followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms **“this Agreement”**, **“hereof”**, **“herein”**, **“hereby”**, **“hereunder”** and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word **“including”**, when used in this Agreement, means **“including without limitation”**.

- (d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with US GAAP except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement.
- (e) Currency - Unless otherwise indicated, all dollar amounts referred to in this Agreement (including the Schedules) are in lawful money of Canada.
- (f) Trade Meanings - Terms and expressions that are not specifically defined in this Agreement, but which have generally accepted meanings in the custom, usage and literature of the electricity industry in Canada as of the date of this Agreement, shall have such generally accepted meanings when used in this Agreement, unless otherwise specified elsewhere in this Agreement.
- (g) Statutory References - Any reference in this Agreement to a statute shall include, and shall be deemed to be, a reference to such statute and to the regulations made pursuant thereto, and all amendments made thereto (including changes to section numbers referenced herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.
- (h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.
- (i) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.
- (j) Time Falling on Non-Business Day - Whenever the time for doing something under this Agreement falls on a day that is not a Business Day such action is to be taken on the first following Business Day.
- (k) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.
- (l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be "approved" or "decided" by a Party or

requires a Party's "consent", then (i) such approval, decision, or consent by a Party must be in writing, and (ii) such Party shall be free to take such action having regard to that Party's own interests, in its sole and absolute discretion.

- (m) **Subsequent Agreements** - Wherever a provision of this Agreement states that **Section 1.2(m)** applies, in respect of the matters referred to in that provision:
- (i) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing; and
  - (ii) any failure, inability or refusal of either Party or both Parties to reach agreement shall constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure.

### **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 NS 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 NS 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 - Non-Disclosure Agreement
- Schedule 2 - Form of Assignment Agreement
- Schedule 3 - Dispute Resolution Procedure

**ARTICLE 2**  
**NOVA SCOTIA BLOCK AND GHG CREDITS**

**2.1 Nova Scotia Block**

NSPML hereby appoints NS Power, and NS Power hereby accepts such appointment, to act as NSPML's agent in respect of the delivery, dispatch and scheduling of the Nova Scotia Block. In its capacity as agent for NSPML, NS Power shall:

- (a) co-ordinate the scheduling and delivery of the Nova Scotia Block by Nalcor in accordance with the ECA, and in particular, Schedule 5 of the ECA (Nova Scotia Block Energy Management);
- (b) accept the Nova Scotia Block from Nalcor at the Delivery Point in accordance with the provisions of the ECA and the Nova Scotia Block Delivery Schedule;
- (c) effect the dispatch of the Nova Scotia Block and its associated delivery;
- (d) co-ordinate scheduled maintenance and the provision to Nalcor of outage plan information in accordance with Schedule 5 of the ECA (Nova Scotia Block Energy Management);
- (e) generally, oversee the performance of Nalcor's obligations under the ECA and carry into effect and enforce NSPML's rights and obligations under the ECA in order to optimize value for NS Power's customers;
- (f) comply with the ECA, including without limitation taking all actions as are required to be taken and refraining from taking any action that would cause NSPML to breach or be in default of the ECA; and
- (g) keep proper and suitable books and records, as they pertain to NS Power's obligations under this Agreement, in accordance with its standard business practices and provide NSPML with full rights to review, copy and audit such books and records.

**2.2 Consent of NSPML Required**

Without first obtaining NSPML's consent, NS Power shall not commence, defend, settle or compromise any Claim by or against Nalcor or any other third party (including but not limited to governmental or taxing authorities) in respect of any of the matters set forth in **Section 2.1**.

**2.3 Greenhouse Gas Credits**

- (a) NSPML hereby assigns to NS Power, unconditionally and absolutely, all of its right, title and interest in and to all of the GHG Credits attributable to the Energy comprising the Nova Scotia Block free and clear of any Encumbrances. Any such assignment shall be effective from time to time as and when such GHG Credits have

been created, the associated Energy is delivered by Nalcor at the Delivery Point, and such GHG Credits are thereby assigned by Nalcor to NSPML; and

- (b) if any Authorized Authority adopts one or more programs with respect to the certification or regulation of energy projects based on greenhouse gas emissions or other environmental standards, then at the request of NS Power acting reasonably, NSPML shall direct Nalcor to make commercially reasonable efforts to apply for and/or register the Muskrat Falls Plant under such certification or regulation in accordance with Section 2.3(c) of the ECA provided that NS Power shall be responsible for the reimbursement of expenses as set forth in Section 2.3(c) of the ECA.

### ARTICLE 3 TRANSMISSION FACILITATION SERVICE

#### 3.1 Provision of Transmission Facilitation Service

NS Power, on behalf of NSPML, shall provide the Transmission Facilitation Service to Nalcor. Without limitation, NS Power shall:

- (a) provide the Transmission Facilitation Service to Nalcor subject to the terms, specifications and limitations set out in the NSTUA;
- (b) invoice, and collect payment from, Nalcor for the following (the “Nalcor Charges”):
  - (i) the Applicable Tariff Charges and, if applicable, the Applicable Supplemental Term Tariff Charges in respect of the provision of the Transmission Facilitation Service;
  - (ii) Upgrade Charges associated with any Upgrades;
  - (iii) in accordance with Section 2.3(b)(xi) of the NSTUA, amounts paid to the NS System Operator in respect of charges for Ancillary Services necessary to support the NS-NTQ quantities transmitted pursuant to the NSTUA;
- (c) calculate any Transmission Losses in accordance with Schedule 3 of NSTUA;
- (d) in respect of any Energy transmitted pursuant to the Transmission Facilitation Service, provide to the NS Transmission System an amount of Energy equal to the Transmission Loss Differential;
- (e) be responsible for the planning and building for such Upgrades as are required to provide Nalcor with the transmission Capacity level specified in the Upgrade Notice provided by Nalcor pursuant to Section 2.3(b)(v) of the NSTUA;
- (f) generally, ensure NSPML’s compliance with the NSTUA, including without limitation taking all actions as are required to be taken and refraining from taking any action that would cause NSPML to breach or be in default of the NSTUA.

### 3.2 NS Power Responsibilities and Covenants

NS Power covenants to NSPML that:

- (a) it shall contract with the NS System Operator for the NS Power Firm Point-to-Point Transmission Service;
- (b) once obtained, it shall maintain the NS Power Firm Point-to-Point Transmission Service in good standing commencing at the commencement date of the NSTUA Initial Term;
- (c) as of the commencement date of the NSTUA Initial Term, and absent the occurrence of Forgivable Events, the transmission Capacity of the NS Power Facilities and the NS Power Firm Point-to-Point Transmission Service, in combination with redispatching in accordance with **Section 3.2(d)**, shall be sufficient to allow transmission of the Nalcor Maximum Transmission Capacity Level in accordance with the NSTUA;
- (d) to the extent required in order to provide the Transmission Facilitation Service, and subject to **Section 3.2(e)**, NS Power shall modify, or shall cause to be modified, the dispatch patterns of NS Power Facilities in order to alleviate such transmission constraints on the NS Transmission System as would otherwise prevent the NS Nominated Transmission Quantity from being Scheduled and delivered over the NS Transmission System ("**Redispatch**");
- (e) NS Power shall not be obligated to Redispatch to alleviate any constraints caused by Forgivable Events. NS Power shall not be relieved of its obligation to Redispatch on the basis that the expenditure associated with the additional cost of such Redispatch would not be in accordance with Good Utility Practice;
- (f) to the extent NS Power considers it commercially reasonable (considering only the financial implications to NS Power and not Nalcor) to Redispatch in order to provide the Transmission Facilitation Service during Planned Maintenance Periods, NS Power shall Redispatch to facilitate the transmission of the NS Nominated Transmission Quantity during Planned Maintenance Periods; and
- (g) NS Power shall maintain the NS Transmission System and the NS Power Facilities in accordance with Good Utility Practice so as to be capable of providing the Transmission Facilitation Service.

### 3.3 Costs associated with the Transmission Facilitation Service

- (a) The Parties anticipate that the costs incurred by NS Power in providing the Transmission Facilitation Service in accordance with **Sections 3.1** and **3.2** (the "**NS Power Incurred Costs**"), including tariff charges for ancillary services, Redispatch costs, system maintenance costs, system capital costs and the Transmission Loss Differential, shall be offset by the Nalcor Charges, which shall be retained by NS Power.

- (b) In the event that in any 60 month period, with such periods commencing on the commencement date of the NSTUA Initial Term, prudently incurred NS Power Incurred Costs are greater than the Nalcor Charges payable by and received from Nalcor for the Transmission Facilitation Service provided in that period, NSPML shall pay the difference between such amounts to NSP as compensation for such additional costs. The Parties will agree on a formula, methodology and process for the calculation and payment of any such difference. **Section 1.2(m)** shall apply to this **Section 3.3(b)**.

#### **3.4 Woodbine Substation**

NSPML will be responsible for the payment for upgrades to the Woodbine substation, currently estimated to cost \$29.7 million, necessary to allow the interconnection of the Maritime Link with the Nova Scotia Transmission System (the “**Woodbine Upgrades**”). The Woodbine Upgrades shall be owned by NSPML. Upon Nalcor Energy’s acquisition of ownership of the Maritime Link pursuant to the Maritime Link-Joint Development Agreement or any other Formal Agreement, NSPML shall transfer the Woodbine Upgrades to NS Power for \$1.00. NS Power shall maintain the Woodbine Upgrades for NSPML and shall invoice NSPML for such maintenance in accordance with the then approved affiliate code of conduct, as approved by the UARB from time to time. Capital improvements to the Woodbine Upgrades paid for by NSPML shall be owned by NSPML and shall form part of the Woodbine Upgrades.

#### **3.5 NSPML Responsibilities and Covenants**

NSPML covenants to NS Power that:

- (a) it shall take such steps as are within its control to comply with and, in cooperation with NS Power, enforce its rights under the NSTUA and the ECA;
- (b) that it shall not amend the NSTUA or ECA without the consent of NS Power, which consent shall not be unreasonably withheld.

### **ARTICLE 4 MARITIME LINK SYSTEM OPERATIONS**

#### **4.1 Interconnection Operators Agreement**

NS Power covenants to NSPML that it shall comply with and perform its duties and obligations under the Interconnection Operators Agreement.

#### **4.2 Maritime Link Transmission Service Agreements**

In respect of the Interconnected Facilities, NS Power shall act as and shall perform the duties of system operator and, without limitation, shall:

- (f) Schedule and otherwise administer the transmission services contemplated by the MLTSAs;

- (g) adopt, post, and administer the ML Transmission Procedures;
- (h) calculate and post ATC and TTC;
- (i) measure Energy and/ or Capacity transmitted on behalf of transmission customers in accordance with the ML Transmissions Procedures;
- (j) establish the Transmission Loss Factor in accordance with the MLTSAs;
- (k) provide the following Ancillary Services:
  - (i) Scheduling, System Control and Dispatch Service, as required to Schedule the transmission of Energy and Capacity over the Maritime Link;
  - (ii) Supply Reactive Supply and Voltage Control in order to maintain transmission voltages within acceptable limits on the Maritime Link and its interconnections with the NL Transmission System and the NS Transmission System, in relation to the Scheduling of Energy and Capacity in accordance with the MLTSAs.

#### **4.3 System, Capital and Maintenance Costs**

- (a) Except to the extent that charges for Ancillary Services are directly recovered from transmission customers pursuant to the MFTSAs and retained by NS Power, NS Power shall charge NSPML for any incremental costs relating to the performance of the duties and functions set out in **Sections 4.1 and 4.2** in accordance with standard rates and tariffs, which amounts shall be incorporated into the Project Cost Assessment;
- (b) NSPML shall be responsible for all capital, operating and maintenance costs associated with the Interconnected Facilities.

### **ARTICLE 5 PURCHASE OF ENERGY AND/ OR CAPACITY**

#### **5.1 Purchase of Energy and/ or Capacity from Nalcor**

As between NS Power and NSPML, to the extent that the acquisition from Nalcor of Energy and/ Capacity in excess of the Nova Scotia Block is in the best interests of the customers of NS Power, NS Power shall have responsibility for the negotiation with Nalcor for the purchase of such Energy and / or Capacity and for the payment of associated costs.

## ARTICLE 6

### PURCHASE OF NB BACKSTOP ENERGY

#### 6.1 Purchase of NB Backstop Energy

If NSPML is obligated to purchase NB Backstop Energy, NSPML may, at its option, require NS Power to purchase any or all of such NB Backstop Energy from NSPML at the Delivery Point or the Nova Scotia/New Brunswick border, as NSPML may elect. The price to be paid for such NB Backstop Energy shall be the equivalent of the avoided cost to NS Power of backing down the applicable amount of generation and/or turning back an alternate import supply (the “NSP Avoided Cost”). The Parties will agree on (i) a protocol for the scheduling of NB Backstop Energy to be so purchased and (ii) a formula and methodology for the calculation of the NSP Avoided Cost. **Section 1.2(m)** shall apply to this **Section 6.1**. Notwithstanding the above, NS Power shall not be required to purchase such NB Backstop Energy to the extent of system reliability constraints on the NS Transmission System as determined in accordance with Good Utility Practice. In that event NS Power shall purchase such lesser amount of NB Backstop Energy, if any, the purchase of which is not so constrained.

## ARTICLE 7

### MARITIME LINK AND PROJECT COST ASSESSMENT APPROVALS

#### 7.1 Project Application

- (a) UARB Approval - NSPML shall apply to the UARB for approval of the Maritime Link and for approval of a Project Cost Assessment pursuant to the Maritime Link Act and Regulations.
- (b) Assistance – NS Power shall provide such assistance as may be reasonably required by NSPML with application(s) for approvals under the Maritime Link Act and Regulations or other Regulatory Approvals which may be required in connection with the Maritime Link.

#### 7.2 Project Cost Assessment

Upon approval by the UARB, NS Power is entitled pursuant to the Regulations to recover a Project Cost Assessment through its rates. NS Power shall take all commercially prudent steps to collect the Project Cost Assessment from its customers in accordance with Maritime Link Act, Regulations and the associated UARB approval and shall promptly remit all such amounts to NSPML as collected. The Parties will agree to a process for the collection and remittance to NSPML of the Project Cost Assessment, such process to be to the satisfaction of NSPML’s project lenders and to the Government of Canada, as guarantor of certain debt obligations of NSPML. **Section 1.2(m)** shall apply to this **Section 7.2**.

## ARTICLE 8 PROVISION OF INFORMATION

### 8.1 Provision of Information

NS Power shall maintain and provide to NSPML, on a monthly basis, such information as NSPML may reasonably require pertaining to NS Power's obligations under this Agreement, including, without limitation, information relating to:

- (a) the delivery, dispatch and scheduling of the Nova Scotia Block;
- (b) the provision of the Transmission Facilitation Service;
- (c) the obligation to Redispatch, if applicable; and
- (d) the calculation of Transmission Losses.

## ARTICLE 9 INVOICING AND PAYMENT

### 9.1 Invoices

Unless otherwise provided in this Agreement with respect to specific payments, the calendar month is the standard period for invoicing amounts payable by a Party (the "Payor") to the other Party (the "Payee") hereunder. On or before the 15th day of each calendar month, the Payee shall provide an invoice to the Payor for all amounts in respect of the preceding month chargeable by the Payee to the Payor and, subject to **Section 9.8**, any amounts not previously invoiced to the Payor. The Payee shall provide with the invoice such supporting documents and information as the Payor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced (the "Supporting Material").

### 9.2 Disputed Amounts

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

### 9.3 Time and Method of Payment

Within 30 days after its receipt of a properly prepared invoice, accompanied by acceptable Supporting Material, the Payor shall pay to the Payee the amount stated on the invoice less any amounts disputed pursuant to **Section 9.2** and any withholding required by Applicable Law. The Payor shall make payment by electronic funds transfer or other mutually agreed method to an account designated by the Payee.

### 9.4 Effect of Payment

Notwithstanding **Section 9.2**, payment of an invoice will not prejudice the right of the Payor to dispute the correctness of the invoice for a period of up to two years after the end of

the calendar year in which the Payor received the invoice. Failure by the Payor to dispute charges will not be deemed to be acceptance of the charges or preclude the Payor from subsequently disputing an amount or conducting an audit of the charges within two years after the end of the calendar year in which the Payor received the invoice. Any charges not disputed in writing by the Payor within two years after the end of the calendar year in which the Payor received the invoice for such charges will conclusively be presumed to be true and correct.

#### **9.5 Resolution of Objections**

The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after the Payee's receipt of a notification of disputed amounts pursuant to **Section 9.2**. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, the Payor shall pay any amount determined to be owing to the Payee within five Business Days after the Payor receives an invoice from the Payee for such amount.

#### **9.6 Overpayments**

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

#### **9.7 Interest on Overdue Amounts**

Any amount not paid by either Party when due, including any charge disputed by the Payor pursuant to **Section 9.2** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 9.3**, and any refund of an overpayment pursuant to **Section 9.6**, will bear interest at the Prime Rate plus three percent per annum, calculated daily not in advance, from the date upon which the payment became due to and including the date of payment, and interest accrued will be payable on demand.

#### **9.8 Waiver of Unbilled Charges**

If a Payee entitled to payment in respect of an amount paid by the Payee to a third party fails to invoice the Payor pursuant to this **Article 9** for such amount within six months after the date the Payee made payment to the third party, the right to such payment by the Payor is waived. Notwithstanding the foregoing, a Party may recover Taxes pursuant to a statutory right to recover such Taxes, including the right to recover HST pursuant to Section 224 of the Excise Tax Act.

#### **9.9 Records and Audits**

Each Party shall keep complete and accurate records and all other data required by it for the purpose of proper administration of this Agreement. Records shall be retained for at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to this Agreement reasonably required

for the other Party to comply with its obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for in the Non-Disclosure Agreement. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

## ARTICLE 10 TAXES

### 10.1 Supplies and Payments Exclusive of Taxes

- (a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.
- (b) Governmental Charges - Subject to **Section 10.1(c)**:
  - (i) NS Power shall pay or cause to be paid all Taxes in respect of the Nova Scotia Block, GHG Credits and NS Transmission System, if any;
  - (ii) if NSPML is required by Applicable Law to remit or pay Taxes which are NS Power's responsibility hereunder, NSPML shall first offset the amount of Taxes so recoverable from other amounts owing by it to NS Power under this Agreement, and NS Power shall promptly reimburse NSPML for such Taxes to the extent not so offset;
  - (iii) if NS Power is required by Applicable Law to remit or pay Taxes which are NSPML's responsibility hereunder, NS Power shall first offset the amount of Taxes so recoverable from other amounts owing by it to NSPML under this Agreement, and NSPML shall promptly reimburse NS Power for such Taxes to the extent not so offset; and
  - (iv) 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 10.1(a)** and **10.2(b)**, the Parties acknowledge and agree that:
  - (i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such

amounts and shall be paid, collected and remitted in accordance with Applicable Law;

- (ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to the other Party, such amount shall first be increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;
  - (iii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other Party such documentation required pursuant to **Section 10.3**; and
  - (iv) if one Party incurs an expense as agent for the other Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.
- (d) Changes in Taxes - Subject to **Sections 10.1(b)** and **10.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.
- (e) Income Taxes and HST - For greater certainty:
- (i) NS Power and its Affiliates are solely responsible for the payment of income taxes and HST payable by NS Power and its Affiliates, as the case may be; and
  - (ii) NSPML and its Affiliates are solely responsible for the payment of income taxes and HST payable by NSPML and its Affiliates, as the case may be.

## **10.2 Determination of Value for Tax Compliance Purposes**

- (a) Subject to the right of final determination as provided under **Section 10.2(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.
- (b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

### **10.3 Invoicing**

All invoices, as applicable, issued pursuant to **Article 9** 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.

### **10.4 Payment and Offset**

- (a) Subject to **Section 10.4(b)**, Taxes collectable by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.
- (b) A Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

### **10.5 HST Registration Status and Residency**

- (a) NSPML represents and warrants that it is registered for purposes of the HST and that its registration number is 82957 4318 RT 0001, and undertakes to advise NS Power of any change in its HST registration status or number.
- (b) NS Power represents and warrants that it is registered for purposes of the HST and that its registration number is 11931 4938 RT 0001, and undertakes to advise NSPML of any change in its HST registration status or number.
- (c) NSPML represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise NS Power of any change in its residency status.
- (d) NS Power represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise NSPML of any change in its residency status.

## **10.6 Cooperation to Minimize Taxes**

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes in accordance with Applicable Law, so long as neither Party is materially adversely affected by such efforts. Each Party shall obtain all available exemptions from or recoveries of Taxes and shall employ all prudent mitigation strategies to minimize the amounts of Taxes required to be paid in accordance with Applicable Law in respect of this Agreement. If one Party obtains any rebate, refund or recovery in respect of any such Taxes, it shall immediately be paid to such other Party to the extent that such amounts were paid by such other Party (and not previously reimbursed).

## **10.7 Additional Tax Disclosure**

Notwithstanding any other provision in this Agreement, unless otherwise agreed to by the Parties in writing, each of the Parties agrees to provide to the other Party, in writing, the following additional information for the purposes of assisting the other Party with the application of Taxes to the Parties in respect of this Agreement:

- (a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;
- (b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act;
- (c) if a Party becomes subject to federal, state or local taxes in the United States; and
- (d) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

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

## **10.8 Prohibited Tax Disclosure**

Except as required by Applicable Law, notwithstanding any other provision of this Agreement, each Party shall not make any statement, representation, filing, return or settlement regarding Taxes on behalf of the other Party to an Authorized Authority without the prior written consent of such other Party.

### **10.9**            **Withholding Tax**

If required by the Applicable Law of any country having jurisdiction, a Party shall have the right to withhold amounts, at the withholding rate specified by such Applicable Law, from any compensation payable pursuant to this Agreement by such Party, and any such amounts paid by such Party to an Authorized Authority pursuant to such Applicable Law shall, to the extent of such payment, be credited against and deducted from amounts otherwise owing to the other Party hereunder. Such Party shall note on each applicable invoice whether any portion of the supplies covered by such invoice was performed inside or outside of Canada for the purposes of Canadian income tax legislation or such other information requested or required by the other Party to properly assess withholding requirements. At the request of the other Party, the Party shall deliver to the other Party properly documented evidence of all amounts so withheld which were paid to the proper Authorized Authority for the account of the other Party.

### **10.10**           **Tax Indemnity**

Each Party (in this Section referred to as the “**First Party**”) shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under this **Article 10** 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 10.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

- (a) any and all Taxes imposed by any Authorized Authority on the other Party in respect of this Agreement, and any and all Claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein; and
- (b) any and all Taxes imposed by any Authorized Authority in respect of the supplies contemplated by this Agreement, and any and all Claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing as a result of the failure by the Party to pay any and all Taxes imposed as stated herein.

### **10.11**           **Additional Tax Indemnity**

If one Party (in this Section referred to as the “**First Party**”) is, at any time, a non-resident of Canada for the purposes of the Income Tax Act or the Applicable Law of a foreign jurisdiction, the First Party agrees to pay the other Party, and to indemnify and save harmless the other Party from and against any and all amounts related to any application or withholding of Taxes required by the laws of the jurisdiction outside of Canada in which the First Party is resident at such time (in this Section referred to as the “**Foreign Jurisdiction**”) on payments made (or consideration provided) pursuant to this Agreement by the other Party to the First Party, provided that:

- (a) any such amount payable by the other Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and
- (b) for greater certainty, this Section shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

#### **10.12 Assignment – Tax Requirements**

Notwithstanding any other provision in this Agreement, except as otherwise agreed to by the Parties in writing, a Party shall not assign any of its interest in this Agreement to another Person unless:

- (a) the Person is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such assignment;
- (b) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Person; and
- (c) the Person agrees, in writing, to comply with the provisions of this **Article 10**.

### **ARTICLE 11 TERM AND TERMINATION**

#### **11.1 Term**

The term of this Agreement (the “Term”) shall commence on the Effective Date and shall terminate in accordance with **Section 11.2**.

#### **11.2 Termination of Agreement**

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

- (a) termination of the NSTUA; and
- (b) written agreement of the Parties to terminate.

#### **11.3 Effect of Termination**

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

- (i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Section 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 11.3**.
- (b) Survival - Notwithstanding the termination of this Agreement, the Parties shall be bound by the terms of this Agreement in respect of:
- (i) the final settlement of all accounts between the Parties;
  - (ii) the readjustment of any accounts as a result of the settlement of insurance claims or third party claims after the date of termination;
  - (iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement; and
  - (iv) any other obligations that survive pursuant to **Section 20.13**.

## ARTICLE 12 DEFAULT AND REMEDIES

### 12.1 NS Power Events of Default

Except to the extent excused as a result of Nova Scotia Block Force Majeure or Transmission Facilitation Service Force Majeure in accordance with **Sections 13.1** and **13.2**, the occurrence of one or more of the following events shall constitute a default by NS Power under this Agreement (an “**NS Power Default**”):

- (a) NS Power 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 written demand from NSPML that such amount is due and owing;
- (b) NS Power fails to provide Transmission Rights in accordance with this Agreement;
- (c) NS Power is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 12.1(a)** or **12.1(b)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NS Power of Notice thereof from NSPML, unless the cure reasonably requires a

longer period and NS Power is diligently pursuing the cure, and it is cured within such longer period of time;

- (d) any representation or warranty made by NS Power in this Agreement is false or misleading in any material respect;
- (e) NS Power ceases to carry on all or substantially all of its business or, except as permitted hereunder, transfers all or substantially all of its undertakings and assets, but only if such cessation or transfer limits NS Power's ability to fulfill its obligations under this Agreement; and
- (f) any Insolvency Event occurs with respect to NS Power.

## **12.2 NSPML Remedies upon NS Power Event of Default**

- (a) General - Upon the occurrence of an NS Power Default and at any time thereafter, provided NSPML 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) NSPML 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 NSPML 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 15**, NSPML may recover all Losses suffered by NSPML that are due to an NS Power 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 NSPML to recover any amounts owed to NSPML by NS Power under this Agreement.
- (c) Early Termination Right - If NS Power is in default of its obligation to provide the Transmission Facilitation Service in accordance with this Agreement and such default is not cured within 24 months after the default of the obligation to provide the Transmission Facilitation Service commenced, NSPML, provided it is in material compliance with the provisions of this Agreement, may, at its option, provide Notice to NS Power that it intends to terminate this Agreement. On providing such Notice to NS Power, NSPML shall be entitled to exercise all rights, remedies and recourse as set forth in this **Section 12.2** to recover all Losses arising from the failure of NS Power to provide the Transmission Facilitation Service for the Term in accordance

with the provisions of this Agreement. On payment to NSPML of such Losses, this Agreement shall terminate without further liability of either Party to the other.

- (d) Recourse Limited - Notwithstanding anything to the contrary in this **Section 12.2**:
- (i) the right, remedy or recourse available to NSPML against NS Power under this Agreement cannot exceed the comparable right, remedy or recourse available to Nalcor against NSPML under the NSTUA or the ECA, as applicable;
  - (ii) NS Power shall not be liable for damages caused by something which is beyond the ability of NS Power to control by reasonable and practicable effort.

### **12.3 NSPML Events of Default**

Except to the extent excused as a result of Nova Scotia Block Force Majeure or a Transmission Facilitation Service Force Majeure in accordance with **Sections 13.1** and **13.2**, the occurrence of one or more of the following events shall constitute a default by NSPML under this Agreement (an “**NSPML Default**”):

- (a) NSPML 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 NS Power that such amount is due and owing;
- (b) NSPML is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 12.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NSPML of Notice thereof from NS Power, unless the cure reasonably requires a longer period and NSPML is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by NS Power;
- (c) any representation or warranty made by NSPML in this Agreement is false or misleading in any material respect;
- (d) NSPML 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 NSPML.

### **12.4 NS Power Remedies upon NSPML Event of Default**

- (a) General - Upon the occurrence of an NSPML Default and at any time thereafter, provided NS Power 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) NS Power 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 NS Power 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 15**, NS Power may recover all Losses suffered by NS Power that are due to an NSPML 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 NS Power to recover any amounts owed to NS Power by NSPML under this Agreement.

## **ARTICLE 13 FORCE MAJEURE**

### **13.1 Force Majeure – Nova Scotia Block**

The Parties agree that the force majeure provisions contained in Section 10.1 of the ECA will apply to any event of force majeure with respect to the Nova Scotia Block (a “**Nova Scotia Block Force Majeure**”), and for the purposes of applying such provisions, the references to “Party” as used in the ECA shall be deemed to refer to NS Power or NSPML, as applicable.

### **13.2 Force Majeure – Transmission Facilitation Service**

The Parties agree that the force majeure provisions contained in Section 9.1 of the NSTUA will apply to any event of force majeure with respect to the Transmission Facilitation Service (a “**Transmission Facilitation Service Force Majeure**”), and for the purposes of applying such provisions, the references to “Transmission Provider” and “Transmission Customer” as used in the NS OATT provisions shall be deemed to refer respectively, to NS Power and NSPML.

### **13.3 Failure to Pay Project Cost Assessment Not Excusable**

The provisions of **Sections 13.1** and **13.2** shall not apply to relieve NS Power of its obligation to pay the Project Cost Assessment to NSPML under **Section 7.2**.

**ARTICLE 14**  
**LIABILITY AND INDEMNITY**

**14.1**            **NSPML Indemnity**

NSPML shall indemnify, defend, reimburse, release and save harmless NS Power 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 “**NS Power 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 NS Power 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 NSPML Group occurring in connection with, incidental to or resulting from NSPML’s obligations under this Agreement.

**14.2**            **NS Power Indemnity**

NS Power shall indemnify, defend, reimburse, release and save harmless NSPML 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 “**NSPML 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 NSPML 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 NS Power Group occurring in connection with, incidental to or resulting from NS Power’s obligations under this Agreement.

**14.3**            **Indemnification Procedure**

- (a) **Generally** - Each Party (each, an “**Indemnitor**”) shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 14.1** or **14.2**, as applicable, (individually and collectively, an “**Indemnified Party**”) as provided therein in the manner set forth in this **Section 14.3**.
- (b) **Notice of Claims** - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.
- (c) **Right to Participate** - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 14.3** at the Indemnitor’s own

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

- (d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 14.3(h)**.
- (e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.
- (f) Cooperation of Indemnified Party - The Indemnified Party shall use all reasonable efforts to make available to the Indemnitor or its representatives all books, records,

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

- (g) Rights Cumulative - Subject to the limitations contained herein, the right of any Indemnified Party to the indemnification provided herein shall be cumulative of, and in addition to, any and all rights to which such Indemnified Party may otherwise be entitled by contract or as a matter of law or equity and shall extend to the Indemnified Party's heirs, successors, permitted assigns and legal representatives.
- (h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 14.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

#### **14.4 Insurer Approval**

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

### **ARTICLE 15 LIMITATION OF DAMAGES**

#### **15.1 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 14** and this **Article 15** shall apply to any and all Claims.

## 15.2 Insurance Proceeds

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

## ARTICLE 16 CONFIDENTIALITY

### 16.1 Non-Disclosure Agreement

The Parties agree that the Non-Disclosure Agreement 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.

## ARTICLE 17 ASSIGNMENT AND CHANGE OF CONTROL

### 17.1 NSPML Assignment Rights

- (a) General - NSPML shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “**NSPML Rights**”), without the prior written consent of NS Power, which consent may be arbitrarily withheld, except that, at any time and from time to time, NSPML, without such consent, shall be entitled to assign all or any portion of its interest in the NSPML Rights to an Affiliate or Affiliates of NSPML, provided that NSPML enters into an agreement with NS Power substantially in the form attached hereto as **Schedule 2**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the NSPML Rights by NSPML unless NSPML 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 NSPML Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a NSPML Affiliate Assignee that would result in such NSPML Affiliate Assignee no longer being an Affiliate of NSPML will be deemed to be an assignment of NSPML Rights requiring the prior written consent of NS Power 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 NS Power Assignment Rights

- (a) General - NS Power shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the “NS Power Rights”) without the prior written consent of NSPML, which consent may be arbitrarily withheld, except that, at any time and from time to time, NS Power, without such consent, shall be entitled to assign all or any portion of its interest in the NS Power Rights to an Affiliate or Affiliates of NS Power, provided that NS Power enters into an agreement with NSPML substantially in the form attached hereto as **Schedule 2**.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the NS Power Rights by NS Power unless NS Power 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 NS Power Rights.
- (c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an NS Power Affiliate Assignee that would result in such NS Power Affiliate Assignee no longer being an Affiliate of NS Power will be deemed to be an assignment of NS Power Rights requiring the prior written consent of NSPML 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.

## 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 3** (the “Dispute Resolution Procedure”).
- (b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 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 **Article 9**, which shall be governed by **Section 9.5**.

## ARTICLE 19 REPRESENTATIONS, WARRANTIES AND COVENANTS

### 19.1 NSPML Representations and Warranties

NSPML represents and warrants to NS Power that, as of the Effective Date:

- (a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;
- (b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of NSPML 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 NS Power in writing on or before the Effective Date, there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;
- (f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; and
- (g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

## **19.2 NS Power Representations and Warranties**

NS Power represents and warrants to NSPML that, as of the Effective Date:

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

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

- (g) it is and will remain a regulated utility in good standing; and
- (h) 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 20  
MISCELLANEOUS PROVISIONS**

**20.1        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 NSPML:

NSP Maritime Link Incorporated  
1223 Lower Water Street  
Halifax, NS  
B3J 3S8  
Attention: Corporate Secretary  
Fax: (902) 428-6112

To NS Power:

Nova Scotia Power Incorporated  
1223 Lower Water Street  
Halifax, NS  
B3J 3S8  
Attention: Corporate Secretary  
Fax: (902) 428-6112

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.

#### **20.2 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.

#### **20.3 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.

#### **20.4 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.

#### **20.5 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.

#### **20.6 Relationship of the Parties**

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

**20.7**            **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.

**20.8**            **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.

**20.9**            **Time of the Essence**

Time shall be of the essence.

**20.10**           **Amendments**

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

**20.11**           **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.

**20.12**           **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.

**20.13**           **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.

**20.14            Successors and Assigns**

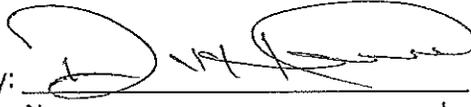
This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors and permitted assigns.

[Remainder of this page intentionally left blank.]

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

**NOVA SCOTIA POWER INCORPORATED**

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

By:   
Name: **Robert J. S. Hanf**  
Title: **President and CEO**

We have authority to bind the company.

**NSP MARITIME LINK INCORPORATED**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

We have authority to bind the corporation.

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

**NOVA SCOTIA POWER INCORPORATED**

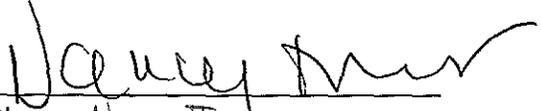
By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

We have authority to bind the company.

**NSP MARITIME LINK INCORPORATED**

By:  \_\_\_\_\_  
Name: Richard Tanega  
Title: President

By:  \_\_\_\_\_  
Name: Nancy Tower  
Title: Chief Executive Officer

We have authority to bind the corporation.

## **AGENCY AND SERVICE AGREEMENT**

### **SCHEDULE 1**

#### **NON-DISCLOSURE OBLIGATIONS**

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

**"Confidential Information"** means all oral, written or machine readable confidential information and data, and any accompanying support materials and documentation, disclosed directly or indirectly by one Party to the other. Confidential Information includes to all trade secrets and all data and information pertaining or related to the disclosing Party, customer lists, and financial information of the disclosing Party:

- (a) which the receiving Party may be aware of, be exposed to, or develop in connection with or as a result of the receiving Party's relationship with the disclosing Party pursuant to the Agreement;
- (b) is identified as confidential or which, from the circumstances should be treated as confidential; and
- (c) is not known to the public and is not released to the public by the disclosing Party.

**1.2** 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** Confidential Information is the property of the Party disclosing same to the other Party and the ownership of, and all right, title and interest therein shall at all times remain exclusively vested in the originating Party.

**1.4** Each of the Parties undertakes to the other:

- (a) that unless it has received the prior written consent of the other Party, it will hold all of the Confidential Information received by it in strict confidence and, without derogating from the generality of the foregoing, will not disclose such Confidential Information to any third Party (other than its advisors as set out in **Section 1.4(c)**) nor use such Confidential Information for any purpose other than carrying out the provisions of the Agreement;
- (b) to use its best efforts to maintain the secrecy of all of the Confidential Information received by it, and
- (c) that any of the Confidential Information received by it shall only be disclosed to those of its employees and advisors who need to know such Confidential Information for the purpose of carrying out the provisions of the Agreement, and

warrant that such employees and advisors are obligated to and will maintain such Confidential Information in confidence.

**1.5** The undertakings of **Section 1.4** hereof shall not apply to any of the Confidential Information which:

- (a) at the time of disclosure is in the public domain;
- (b) after disclosure is published or otherwise becomes part of the public domain through no fault of the Party receiving the Confidential Information (but only after it is published or becomes part of the public domain);
- (c) a Party can show in its possession at the time of disclosure hereunder and which was not acquired by it under an obligation of confidence;
- (d) a Party can show that the Confidential Information was received by it after the time of disclosure hereunder from a third Party who did not require the Party to hold it in confidence and who did not acquire it directly or indirectly from the originating Party and/or any associated corporation;
- (e) is disclosed by a Party pursuant to requirements of law.

**1.6** The disclosure of the Confidential Information shall not be construed as granting to the other Party a license of any rights under any copyrights, copyright applications or trade secrets in any country relating to any of the Confidential Information which the originating Party or an associated corporation may now or hereafter own or under which the originating Party or an associated corporation may now or hereafter hold licensing rights.

**1.7** The receiving Party shall return to the originating Party the Confidential Information on or before any date as may be specified hereafter by the originating Party in writing even though the receiving Party shall not have completed the purpose for which the Confidential Information shall have been disclosed and delivered.

**1.8** Immediately upon receipt of a request to return the Confidential Information, the Party who received such Confidential Information shall forthwith deliver to the originating Party all the Confidential Information of every kind in its possession.

**1.9** Any termination of the Agreement, be it actual, implied, constructive, or otherwise, shall not affect the other Party's non-disclosure and non-use obligations hereunder, and such obligation shall survive any termination of the Agreement.

**AGENCY AND SERVICE AGREEMENT**

**SCHEDULE 2**

**ASSIGNMENT OF AGENCY AND SERVICE 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:**

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

- or -

**NSP MARITIME LINK INCORPORATED**, a Newfoundland and Labrador body corporate, extra-provincially registered under the laws of the Province of Nova Scotia ("**NSPML**")

- and -

**AFFILIATE of NSPML or NS POWER**, a [*type of entity and jurisdiction or statute of incorporation or formation*] ("**Assignee**")

- and -

**NSP MARITIME LINK INCORPORATED**, a Newfoundland and Labrador body corporate, extra-provincially registered under the laws of the Province of Nova Scotia ("**NSPML**")

- or -

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

[NTD: Need to add Affiliate of NSPML or NS Power, as applicable, as party in event of prior assignments.]

**WHEREAS:**

- A. NSPML and NS Power entered into the Agency and Service Agreement on \_\_\_\_\_, 2013 (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;

"**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 [NSPML/NS Power or an Affiliate of NSPML/NS Power, 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 Halifax Regional Municipality, NS;

**"Consenting Party"** means [NSPML/NS Power 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;

**"NS Power"** has the meaning set forth in the preamble to this Agreement and includes NS Power'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 *Companies Act* (Nova Scotia), 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 *Companies Act* (Nova Scotia), *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;

**“NSPML”** has the meaning set forth in the preamble to this Agreement and includes NSPML’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 9:00 a.m. through 5:00 p.m. local time on Business Days;

**"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;

**"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 Nova Scotia and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Section 4.1**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Nova Scotia 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, [NSPML/NS Power] 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 [NSPML/NS Power] Defaults

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

- (a) [NSPML/NS Power] 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 [NSPML/NS Power].

## 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 3 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 NSPML/NS Power:]

[•]

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.

[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 NSPML or NS Power, as  
applicable, in event of prior assignments]**

**AGENCY AND SERVICE AGREEMENT**

**SCHEDULE 3**

**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* (Nova Scotia);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **1.2**            **Section References**

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

### 1.3 **Appendix**

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

Appendix A - *Commercial Arbitration Code (Canada)*

## SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

### 2.1 **Purpose and Sequence of Dispute Resolution**

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

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

### 2.2 **Confidentiality**

- (a) Subject to **Section 2.2(b)**, all Information disclosed by a Party pursuant to the Negotiation Procedure, the Mediation Procedure, the Arbitration Procedure or the Expert Determination Procedure shall be treated as confidential by the Parties and any Mediator, Arbitrator or Independent Expert. Neither the disclosure nor production of Information will represent any waiver of privilege by the disclosing Party. Each Party agrees not to disclose Information provided by the other Party for the purposes hereof to any other Person for any other purpose. Further, such

Information shall not be used in any subsequent proceedings without the consent of the Party that disclosed it.

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

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

#### **5.6**            **Awards**

- (a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.
- (b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.
- (c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.

- (d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.
- (e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus three percent per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is paid in full.
- (f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

## 5.7 **Settlement**

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

## **SECTION 6 – EXPERT DETERMINATION PROCEDURE**

### 6.1 **Referral for Expert Determination**

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

### 6.2 **Qualifications of Independent Expert**

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

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

each Party and the Independent Expert prior to the Independent Expert being retained.

### **6.3 Selection of the Independent Expert**

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

### **6.4 Terms of Reference**

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

### **6.5 Information Provided to Independent Expert**

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

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

#### **6.6 Dispute Context**

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

#### **6.7 No ex parte Communication**

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

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

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

#### **6.8 Initial Meeting and Joint Presentations by the Parties**

Within 10 Business Days after the Appointment Date, the Independent Expert and the Parties shall attend an initial informational meeting (the “**Initial Meeting**”) in Halifax, Nova Scotia, 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 Schedule 3

### 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.