

LABRADOR-ISLAND LINK GENERAL PARTNER CORPORATION

and

LABRADOR-ISLAND LINK HOLDING CORPORATION

and

**EACH PERSON WHO IS ADMITTED TO
THE PARTNERSHIP AS A LIMITED PARTNER
IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT**

**LABRADOR-ISLAND LINK LIMITED PARTNERSHIP
LIMITED PARTNERSHIP AGREEMENT**

July 31, 2012

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- Schedule 2 - Form of Transfer
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- Schedule 4 - Dispute Resolution Procedure

LIMITED PARTNERSHIP AGREEMENT

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

AMONG:

LABRADOR-ISLAND LINK GENERAL PARTNER CORPORATION, as
general partner

- and -

LABRADOR-ISLAND LINK HOLDING CORPORATION, as initial limited
partner

and each Person who is admitted to the Partnership as a partner in
accordance with the provisions of this Agreement.

WHEREAS:

- A. the General Partner and Nalcor LP have formed the Partnership on the Effective Date as a limited partnership by the filing of a certificate signed by the General Partner and Nalcor LP as initial limited partner in accordance with Section 4 of the Act pursuant to this Agreement;
- B. the Partnership is formed to carry on the business of designing, engineering, constructing, Commissioning, owning, financing, operating and maintaining the assets and property constituting the Labrador-Island Link (including leasing the LIL pursuant to the LIL Assets Agreement), and all activities ancillary and incidental thereto (the "**Business**"); and
- C. this Agreement is being entered into to set out the terms and conditions applicable to the relationship among the Partners and to the conduct of the Business;

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:

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

“Accumulated Depreciation” means at the beginning of a Fiscal Year, the sum of Annual Depreciation on the LIL taken in respect of all prior Fiscal Years;

“Act” means the *Limited Partnership Act* (NL);

“Actual AFUDC” means the total Financing Costs and Return on Equity of the LIL as at First Commercial Power as approved by the PUB or other Authorized Authority;

“Actual Capital Costs” means the total Capital Costs of the LIL as at First Commercial Power, as determined and calculated in accordance with the Cost Accounting Protocol, and as reduced by the value of any financial assistance in the form of a direct subsidy or other kind of cash contribution from the Government of Canada but excluding any loans or loan guarantees;

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

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

“Annual Depreciation on the LIL” means in any Fiscal Year after First Commercial Power the sum of Actual Capital Costs plus Actual AFUDC, less Capital Costs related to Overrun Contributions, less Accumulated Depreciation, all divided by the remaining Service Life of the LIL;

“Annual Distributable Cash Budget” has the meaning set forth in **Section 5.4(a)**;

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

“Auditor” means a national firm of chartered accountants of recognized standing appointed by the General Partner, with the approval of the Limited Partners by Ordinary Resolution, as auditor for the Partnership for the time being, whether or not such firm of chartered accountants is regularly retained by the General Partner;

“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;

“Board of Directors” means the board of directors of the General Partner;

“Budgeted Distribution” has the meaning set forth in **Section 5.3(a)(i)**;

“Business” has the meaning set forth in the recitals to this Agreement;

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

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

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

“Capital Account” means in respect of a class of Units held by a Partner the account maintained by the Partnership showing from time to time all Capital Contributions made by such Partner (or the Partner's predecessor in interest to the Partner's Partnership Interest) for Units or otherwise, plus Net Income allocated in accordance with **Section 5.1**, less Net Loss allocated in accordance with **Section 5.1**, less all Distributions to such Partner (or the Partner's predecessor in interest to the Partner's Partnership Interest), and less all Capital Contributions returned to such Partner (or the Partner's predecessor in interest to the Partner's Partnership Interest);

“Capital Contribution” of a Partner means the aggregate of:

- (a) the total amount of money paid to the Partnership by such Partner (or the Partner's predecessor in interest to the Partner's Partnership Interest) in consideration for Units or as a contribution thereon;
- (b) with respect to Nalcor LP, the value of property contributed by Nalcor LP to the Partnership prior to First Commercial Power; and
- (c) after First Commercial Power, the value as determined by the General Partner of property (including, for greater certainty, money) contributed to the Partnership by such Partner (or the Partner's predecessor in interest to the Partner's Partnership Interest) in consideration for Units or as a contribution thereon;

“Capital Costs” means all costs incurred for Development Activities, determined and calculated in accordance with the Cost Accounting Protocol, but for greater certainty excluding, without duplication, AFUDC, Actual AFUDC, Financing Costs and Return on Equity;

“Certificate” means the certificate of limited partnership for the Partnership filed under the Act and all amendments to such certificate and renewals or replacements of such certificate;

“Class A Annual True-Up Distribution” has the meaning set forth in **Section 3.2(a)(ii)(B)**;

“Class A Limited Unit Capital Account” means the Capital Account maintained by the Partnership in respect of the Class A Limited Units;

“Class A Limited Units” means an undivided interest in the Partnership with the characteristics set forth in **Section 3.2(a)** beneficially held by a Limited Partner as evidenced by a certificate in the form prescribed by the General Partner;

“Class A Periodic Distribution” has the meaning set forth in **Section 3.2(a)(ii)(A)**;

“Class B Annual True-Up Distribution” has the meaning set forth in **Section 3.2(b)(ii)(B)**;

“Class B Limited Unit Capital Account” means the Capital Account maintained by the Partnership in respect of the Class B Limited Units;

“Class B Limited Units” means an undivided interest in the Partnership with the characteristics set forth in **Section 3.2(b)** beneficially held by a Limited Partner as evidenced by a certificate in the form prescribed by the General Partner;

“Class B Periodic Distribution” has the meaning set forth in **Section 3.2(b)(ii)(A)**;

“Class C Limited Unit Capital Account” means the Capital Account maintained by the Partnership in respect of the Class C Limited Units;

“Class C Limited Units” means an undivided interest in the Partnership with the characteristics set forth in **Section 3.2(c)** beneficially held by a Limited Partner as evidenced by a certificate in the form prescribed by the General Partner;

“Commissioning” means the start-up and testing activities required to demonstrate that the LIL is ready to transmit Energy and Capacity in accordance with its design criteria;

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

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

“Cost Accounting Protocol” means the methods, procedures and cost accounting principles to be used in determining Capital Costs for the purposes of this Agreement, as set forth in **Schedule 1**;

“Cost Overruns” means any estimated amount of Capital Costs in respect of Development Activities in excess of that previously approved by the PUB or other Authorized Authority;

“Date of Retirement” has the meaning set forth in **Section 3.12(a)**;

“Debt:Equity Ratio” or **“DER”** means, with respect to the Partnership:

- (a) the value of the Partnership debt, including any related accrued interest, arising from the Financing, compared to
- (b) the aggregate amount of the Capital Accounts (other than the Class C Limited Unit Capital Account),

expressed as a ratio;

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

“Departing Partner” means any former General Partner;

“Development Activities” means all activities and undertakings necessary to design, engineer, procure, construct, Commission and achieve First Commercial Power of the LIL, including obtaining Regulatory Approvals, environmental and performance testing, and demobilization, and including all related project management services, and activities and includes the product of such activities and undertakings;

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

“Dispute Resolution Procedure” has the meaning set forth in **Article 15**;

“Distributable Cash” means, in respect of a Fiscal Year, all cash inflows to the Partnership during such Fiscal Year, including Prepaid Rent received in respect of such Fiscal Year, less cash reasonably required to (or to be set aside to) satisfy the current and reasonably foreseeable payments under the Financing Documents, other contractual payment obligations, Tax obligations, ongoing working capital needs, any Reserves or the payment of other Expenditures (excluding any amount to be funded by the holder of Class C Limited Units) (in each case as determined by the General Partner on a commercially reasonable basis and without duplication);

“Distributions” means Periodic Distributions and True-Up Distributions, and, solely for the purposes of **Sections 5.2, 5.5, 5.6, 5.7** and **5.12**, includes Retirement Payments;

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

“Emera” means Emera Inc., a company incorporated under the laws of NS and includes Emera’s successors;

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

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

“Expenditures” means all expenditures made by the Partnership, or the General Partner, in connection with the Business;

“Financing” means the credit facilities granted or extended to, or invested by way of debt (or the purchase of debt) in, the Partnership whereby or pursuant to which money, credit or other financial accommodation (including by way of hedging, derivative or swap transactions) has been or may be provided, made available or extended to the Partnership by any Person, other than any of the Partners or a Retired Partner or their respective Affiliates, by way of borrowed money, the purchase of debt instruments or securities, bankers acceptances, letters of credit, overdraft or other forms of credit or financial accommodation (including by way of hedging, derivative or swap transactions), in each case to finance or refinance the Development Activities;

“Financing Costs” means all costs incurred by the Partnership with respect to debt financing of the Actual Capital Costs, excluding those Actual Capital Costs not approved by the PUB or other Authorized Authority in the following categories:

- (a) interest on debt incurred prior to First Commercial Power to finance the Business;
- (b) costs incurred that are directly attributable to the arrangement of debt financing, including costs associated with legal, Tax, accounting, technical and other internal or third party advisors;
- (c) underwriting and commitment fees;
- (d) rating agency fees;
- (e) costs of financing Reserves required by Financing Parties; and
- (f) travel costs associated with the Partnership's financing effort,

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

“Financing Documents” means all credit agreements, indentures, bonds, debentures, other debt instruments, guarantees, guarantee issuance agreements, other credit enhancement agreements and other contracts, instruments, agreements and documents evidencing any part of the Financing or any guarantee or other form of credit enhancement for the

Financing and includes all trust deeds, mortgages, security agreements, assignments, escrow account agreements, ISDA Master Agreements and Schedules, guarantee agreements, guarantee issuance agreements, other forms of credit enhancement agreements and other documents relating thereto;

“Financing Parties” means all lenders, bondholders and other creditors (including any counterparty to any hedging, derivative or swap transaction) providing any part of the Financing to the Partnership, any guarantor of or other provider of credit enhancement for any part of the Financing which is not an affiliate of Nalcor and includes all agents, collateral agents and collateral trustees acting on their behalf;

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

“Fiscal Year” means the fiscal year of the Partnership as provided in **Section 2.6**;

“GP Unit” means an undivided interest in the Partnership with the characteristics set out in **Section 3.3** beneficially held by the General Partner as evidenced by a unit certificate in the form prescribed by the General Partner;

“General Partner” means Labrador-Island Link General Partner Corporation, a NL corporation and a Wholly-Owned Subsidiary of Nalcor, in its capacity as general partner of the Partnership, or any Person who is a Qualified Partner and is admitted to the Partnership as a successor or assign of the General Partner;

“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 on Prepaid Rent**” means any interest or other income earned by the Partnership from the investment of sums kept on account of Prepaid Rent, including any interest or other income earned on the re-investment of such interest or other income so earned;

“**Indemnified Amount**” has the meaning set forth in **Section 10.6(f)**;

“**Indemnified Party**” has the meaning set forth in **Section 10.2(a)**;

“**Indemnified Tax**” has the meaning set forth in **Sections 5.7(a)** and **10.6**;

“**Independent Director**” means a duly appointed member of the Board of Directors who shall not have been, at the time of such appointment or at any time in the preceding five years, (i) a direct or indirect legal or beneficial owner of any capital stock of the General Partner or of any of its Affiliates, (ii) a creditor, supplier, employee, officer, director, family member, manager or contractor of the General Partner or any of its Affiliates, or (iii) a Person who Controls (whether directly, indirectly or otherwise) the General Partner or any of its Affiliates or any creditor, supplier, employee, officer, director, manager or contractor of the General Partner or any of its Affiliates;

“**Initial Term**” has the meaning set forth in the definition of LIL Assets Agreement;

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

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

insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

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

“Interim Period” means in respect of a Periodic Distribution, a financial quarter or such other interim period determined by the General Partner acting reasonably to be necessary or desirable in the interests of the Partnership, in accordance with the Financing Documents;

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

“LIL Assets Agreement” means an agreement between the Partnership and Opco, whereby the Partnership shall agree, in consideration of:

- (a) the assumption by Opco, to the complete exoneration of the Partnership, of the obligation to pay for all Operating and Maintenance Costs, and amounts related to a LIL Redevelopment or a LIL Expansion; and

- (b) the annual payment by Opco of rents, fees, royalties or other periodic payments (collectively “**Rent**”) as stipulated in such agreement, and which, in the aggregate, shall be sufficient to provide the Partnership with funds to an annual amount sufficient to recover:
 - (i) applicable operating expenses to administer the Partnership calculated on an annual basis; plus
 - (ii) Annual Depreciation on the LIL (prorated if necessary); plus
 - (iii) the Tax Adjustment Amount calculated on an annual basis; plus
 - (iv) any Taxes payable by the Partnership (excluding any Taxes which are or will be included in the Tax Adjustment Amount but including, for greater certainty, any Taxes payable by the Partnership and required to be withheld by Opco on the payment of Rent), grossed-up to the extent necessary so that the amount of Rent retained by the Partnership, net of any such Taxes, shall equal the amount of Rent the Partnership would have retained if such Taxes were not payable by the Partnership; plus
 - (v) annual return on the Undepreciated Capital Asset,
 - (A) calculated as a percentage, that is equal to:
 - (1) the actual annual cost of the debt owed by the Partnership as a percentage, being interest expense divided by the debt principal value, averaged as appropriate; plus
 - (2) the RROE applicable from time to time,
 both weighted according to the DER; multiplied by
 - (B) the Undepreciated Capital Asset, averaged as appropriate; plus
 - (vi) annual funding of appropriate amounts relating to Reserves as determined by the General Partner or required by a Restrictive Agreement; less
 - (vii) any Prepaid Rent paid and attributable to such Fiscal Year,

that upon Commissioning the Partnership shall put Opco in possession and control of the assets comprising the LIL, including Project Assets, for an initial term (“**Initial Term**”) equal to the Service Life of the LIL, less one month; it is expected that such agreement will include provision for:

- (c) a lease of all of the Partnership’s rights, title and interests in and to real property, personal property and chattels real that are part of the LIL;

- (d) a licence to use all of the Partnership's rights, title and interests in and to (x) easements, contracts, intellectual property and other intangible property that are part of the LIL and whether or not capable of assignment, and (y) all permits, licences, permissions and operating authorities, whether the same are in law property or not, that relate to the LIL or any part of it, in all cases, together with a right to a release and reconveyance thereof at the end of the Initial Term; and
- (e) the payment of Prepaid Rent;

"LIL Expansion" means activities, additions or upgrades that are designed to increase the capacity limits of the Labrador-Island Link in excess of the transmission capacity of the Labrador-Island Link as established at the date of LIL Sanction;

"LIL Redevelopment" means one or more programs of activities undertaken to replace major components of the Labrador-Island Link, resulting in a restarted Service Life of the Labrador-Island Link, and for greater clarity:

- (a) LIL Redevelopment excludes normal maintenance activities and activities related to Sustaining Capital reinvestment; and
- (b) the Service Life of the Labrador-Island Link will be considered to have been restarted if, as a result of one or more programs of activities described above, a new service life in respect of the Labrador-Island Link is designated by the PUB or other Authorized Authority;

"LIL Sanction" means final approval by the Partnership to proceed to commencement of construction of the Labrador-Island Link, as evidenced by the passing of a resolution of the Board of Directors authorizing the Partnership to undertake activities, enter into contractual obligations and incur costs as required for the purposes of the completion of the Development Activities;

"LP Registry" means the Registry of Limited Partnerships maintained by the Registrar of Companies appointed under the *Corporations Act* (NL);

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

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

"Limited Partner" means any Person who is or becomes a limited partner of the Partnership;

"Limited Partner Default" has the meaning set forth in **Section 9.1**;

“Limited-Recourse Amount” has the meaning set out in the Tax Act for the purposes of Section 143.2 thereof;

“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;

“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 Nova Scotia Transmission System in accordance with the Maritime Link Joint Development Agreement;

“Maritime Link Joint Development Agreement” means the agreement of even date herewith between Nalcor and Emera relating to the development of the Maritime Link;

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

“NL” means the Province of Newfoundland and Labrador;

“NL corporation” means a corporation incorporated under the laws of NL;

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

“NLH” means Newfoundland and Labrador Hydro, a NL corporation, that is a Wholly-Owned Subsidiary of Nalcor, and includes its successors;

“NS” means the Province of Nova Scotia;

“Nalcor” means Nalcor Energy, a body corporate existing pursuant to the *Energy Corporation Act* (NL), and includes Nalcor’s successors;

“Nalcor LP” means Labrador-Island Link Holding Corporation, a NL corporation that is a Wholly-Owned Subsidiary of Nalcor, and includes Nalcor LP’s successors and permitted assigns;

“Net Income” or **“Net Loss”**, in respect of any period, means, respectively, the net income or net loss of the Partnership in respect of such period as determined in accordance with Canadian GAAP as amended to reflect LIL regulatory accounting principles as accepted by the PUB or other Authorized Authority;

“Normal Reassessment Period” means:

- (a) in respect of Canadian federal income Tax of the holder of the Class B Limited Units (in this definition, the **“Holder”**) for any particular taxation year of the Holder, the period ending on the later to occur of:
 - (i) the expiration of the normal reassessment period for such taxation year as determined under the Tax Act; and
 - (ii) the expiration of any waiver in respect of such taxation year granted by or on behalf of such Holder to the Authorized Authority in respect of Canadian federal income Tax, provided that:
 - (A) the waiver (if granted by the Holder and not by the General Partner) is granted in circumstances where it is reasonable to believe that, but for the granting of the waiver, such Authorized Authority would have issued an assessment or reassessment in respect of such taxation year; and
 - (B) the Holder has not made any misrepresentation that is attributable to neglect, carelessness or wilful default and has not committed any fraud in filing a return or in supplying any information under the Tax Act in respect of such taxation year such that the Authorized Authority would be able to issue an assessment or reassessment after the expiration of the period described in paragraph (a)(i); and
- (b) in respect of any other Tax of such Holder for such taxation year, the period ending on the later to occur of:
 - (i) the expiration of the period during which an Authorized Authority in respect of such Tax may assess or reassess the Holder in respect of such Tax for such taxation year absent any misrepresentation that is attributable to neglect, carelessness or wilful default or any fraud in filing a return or in supplying any information under the Applicable Law or any conduct on the part of the Holder amounting to wilfulness, gross negligence or similar conduct that would have the effect of extending the period during which the Authorized Authority may assess or reassess Tax in respect of such taxation year; and
 - (ii) the expiration of any waiver granted by or on behalf of the Holder to such Authorized Authority in respect of such taxation year in circumstances comparable to those set out in paragraph **(a)(ii)**;

“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 16.1**;

“Notice of Retirement” has the meaning set forth in **Section 3.12(a)**;

“Nova Scotia Transmission System” means the bulk energy transmission system in NS;

“Opco” means Labrador-Island Link Operating Corporation, a NL corporation that is a Wholly-Owned Subsidiary of Nalcor, and includes its successors;

“Operating and Maintenance Costs” means all costs incurred to operate, maintain and administer the Labrador-Island Link (but excluding (x) Sustaining Capital, which shall be the responsibility of the Partnership, and (y) amounts related to a LIL Redevelopment or a LIL Expansion, which shall be the responsibility of Opco under the LIL Assets Agreement);

“Ordinary Resolution” means:

- (a) a resolution approved by more than 50% of the votes cast in person or by proxy at a duly constituted meeting of Partners or at any adjournment of that meeting, called in accordance with this Agreement; or
- (b) a written resolution in one or more counterparts signed by Partners holding in the aggregate more than 50% of the aggregate number of Units held by those Partners who are entitled to vote on that resolution at a meeting;

“Overrun Contribution” means a Capital Contribution made by the holder of the Class C Limited Units in an amount equal to that portion of a Cost Overrun not approved by the PUB or other Authorized Authority;

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

“Partners” means the General Partner and the Limited Partners, collectively, and **“Partner”** means any one of them;

“Partnership” means the limited partnership governed by this Agreement and formed under the laws of NL as a limited partnership by the filing of the Certificate under the Act;

“Partnership Interest” means, in respect of any Partner, such Partner’s interest in the Partnership, represented by such Partner’s Units, Capital Account and all other rights and entitlements related thereto under this Agreement;

“Party” means a Person party to this Agreement, including the General Partner and every Limited Partner from time to time;

“Periodic Distribution” means a distribution of Distributable Cash to Partners, to be made on a quarterly basis (or such other period consistent with the Financing Documents as may be determined by the General Partner, acting reasonably, to be necessary in the interests of the Partnership), as set forth in **Section 5.3**;

“Person” includes an individual, a partnership, a corporation, a company, a joint venture, an unincorporated organization, a union, a government or any department or agency thereof

and, except for the purposes of holding a Partnership Interest, a trust, and the heirs, executors, administrators or other legal representatives of an individual;

“Prepaid Rent” means Rent paid to the Partnership in advance by Opco under the LIL Assets Agreement;

“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 Assets” means all real and personal property, contracts, choses in action, assets and undertakings used for the purposes of the LIL from time to time, including relevant real property interests and Project Data;

“Project Data” means all data, documents, reports, analyses, tests, specifications, charts, plans, drawings, ideas, schemes, correspondence, communications, lists, manuals, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operations, know-how, trade or other secrets, contracts, LIL financial information, engineering reports, environmental reports, information concerning relevant real property interests, field notes, sketches, photographs, computer programs, records or software (in both source code and object code form), specifications, models or other information resulting from Development Activities, and includes the media on which such data and information is stored, obtained or received by any Party;

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

“Proportionate Interest” means, with respect to a Limited Partner as of any specific time, the percentage that the amount of the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account, then outstanding, as the case may be, of such Partner at such time is of the aggregate amount of the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account, of all Limited Partners at such time;

“Proposed Amendments” has the meaning set forth in **Section 5.16(a)(ii)**;

“Qualified General Partner” means a corporation, the articles of incorporation of which contain provisions that:

- (a) limit the purposes of the corporation to acting as a general partner of the Partnership;
- (b) limit the indebtedness that may be incurred by the corporation to that which is necessary to pursue its purposes as aforesaid in the ordinary course of business;
- (c) prohibit the corporation from engaging in any dissolution, liquidation, consolidation, merger or sale of all or substantially all of its assets as long as any amounts are

outstanding under the Financing and the credit facilities, extension of credit and accommodations thereunder have not been cancelled and terminated;

- (d) prohibit any amendment to its articles of incorporation as long as any amount is outstanding under the Financing and the credit facilities, extensions of credit and accommodations thereunder have not been cancelled and terminated;
- (e) require that at least one of the directors of the corporation be an Independent Director; and
- (f) require that a Special GP Resolution be adopted in order to:
 - (i) file a bankruptcy or insolvency petition or otherwise institute insolvency proceedings or cause the Partnership to do any of the foregoing;
 - (ii) dissolve, liquidate, consolidate, merge or sell all or substantially all of the assets of the corporation;
 - (iii) engage in any business activity other than acting as the General Partner of the Partnership; or
 - (iv) amend the articles of incorporation of the corporation;

“Qualified Partner” means a Person which:

- (a) is a corporation validly incorporated under the laws of NL and is validly subsisting under the laws of NL;
- (b) is operating in NL, has its sole permanent establishment for provincial income tax purposes in NL, and has, as its sole activity and assets, its Partnership Interest in the Partnership and related assets;
- (c) has the capacity and authority to enter into this Agreement, and has, at the request of the General Partner, provided such evidence as to capacity and authority as the General Partner may reasonably request;
- (d) is a resident of Canada for the purposes of the Tax Act and is not a “financial institution” for the purposes of the “mark-to-market” rules in section 142.2 of the Tax Act or a “non-Canadian” within the meaning of the *Investment Canada Act*;
- (e) has full power and authority to execute this Agreement and all other agreements contemplated hereby required to be signed by it and to take all actions required pursuant hereto, and has obtained all necessary approvals of its directors, shareholders, members or others, and such execution and the performance of its obligations under this Agreement does not conflict with or constitute a default under its articles, by-laws or any agreement by which it is bound;

- (f) has duly authorized, executed and delivered this Agreement and in respect of which this Agreement constitutes a legal, valid and binding obligation enforceable against such Qualified Partner in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and general principles of equity;
- (g) is acting on its own behalf, and no interest in which is a "tax shelter investment" as that term is defined in subsection 143.2(1) of the Tax Act;
- (h) together with its Affiliates, has not taken, and shall not take, any action (including any failure to act) that will cause the interest of the Person in the Partnership to be a "tax shelter investment" as that term is defined in subsection 143.2(1) of the Tax Act (but read without reference to subparagraphs (b)(ii) and (iii) of that definition);
- (i) has not financed its acquisition of Units or any Capital Contributions with indebtedness any portion of which constitutes a Limited-Recourse Amount;
- (j) has not taken any action that will cause the Partnership to be, or create a material risk that the Partnership will be, a "SIFT partnership" as that term is defined in subsection 197(1) of the Tax Act;

and is not nor is any securityholder, director or officer of such a Person:

- (i) a Person (other than the entity Controlling the holder of the Class B Limited Units and its Affiliates) which is determined by the General Partner to be a Person that is a competitor of Nalcor in any of its businesses; or
- (ii) a Restricted Person,

provided however that notwithstanding the forgoing provisions of this definition, any Financing Party shall be deemed to be a Qualified Partner for the purposes of the liens on and security interests to be created in the Units;

"Rate of Return on Equity" or **"RROE"** means an annual after-Tax rate of return expressed as a percentage to be earned by the Partnership, which rate of return shall be calculated in accordance with regulatory accounting principles as applied by the PUB or other Authorized Authority;

"Redeemed Units" has the meaning set forth in **Section 3.12**;

"Redemption Price" has the meaning set forth in **Section 3.12(b)**;

"Register" has the meaning set forth in **Section 3.6**;

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

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

“Rent” has the meaning set forth in the definition of LIL Assets Agreement;

“Reporting Issuer” has the meaning set forth in the *Securities Act* (NL);

“Requested Party” has the meaning set forth in **Section 5.16(a)**;

“Requesting Party” has the meaning set forth in **Section 5.16(a)**;

“Requisitioning Partner” has the meaning set forth in **Section 8.1**;

“Reserves” means reserves as approved by the PUB or other Authorized Authority:

- (a) required under the Financing Documents; or
- (b) determined by the General Partner acting reasonably to be necessary in the interests of the Partnership,

to be withheld from any Distribution to Partners having regard to the current and anticipated future cash requirements of the Partnership, including administrative and operating expenses, payments in respect of any Financing or other commitments and obligations, Capital Costs, allowance for contingencies and working capital as considered appropriate by the General Partner from time to time and reserves to ensure compliance with the agreements to which the Partnership is subject, or funding of any sinking fund deemed necessary where the Service Life has been shortened, but excluding any reserves related to assets funded by an Overrun Contribution;

“Restricted Person” means any Person who, or any member of a group of Persons acting together, any one of which:

- (a) has, directly or indirectly, its principal or controlling office in a country that is subject to any economic or political sanctions imposed by Canada;
- (b) conducts the business of illegal manufacture, sale, distribution or promotion of narcotic substances or arms, or is or has been involved in terrorism or other criminal activities; or
- (c) in the case of an individual, he or she (or in the case of a legal entity, any of the members of its board of directors or its senior executive managers) has been sentenced to imprisonment or otherwise given a custodial sentence, other than a suspended sentence, for any criminal offence, other than minor traffic offences, less than five years prior to the date on which the consideration of whether such individual is a “Restricted Person” is made;

“Restrictive Agreement” means any agreement which imposes limitations and conditions on the capacity of the Partnership to make Distributions to the Partners, and includes for avoidance of doubt, any Financing Document;

“Retired Limited Partner” has the meaning set forth in **Section 3.12**;

“Retirement” has the meaning set forth in **Section 3.12**;

“Retirement Payments” has the meaning set forth in **Section 3.12(c)**;

“Retirement Statement of Account” has the meaning set forth in **Section 3.12(a)**;

“Return on Equity” or **“ROE”** means the amount of return to Partners in respect of the capital invested in the Labrador-Island Link as reflected in the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account, respectively from time to time and is equal to the Net Income or Net Loss allocated to the Limited Partners in accordance with **Section 5.1**;

“STA” means, collectively, the *Securities Transfer Act* (NL) and comparable legislation in effect in any other applicable jurisdiction;

“Securities Legislation” means, collectively, the *Securities Act* (NL) and the regulations, rules and policies thereunder and comparable legislation, rules and policies in effect in any other applicable jurisdiction;

“Service Life” means the period of time immediately following First Commercial Power, as designated by the PUB or other Authorized Authority, from time to time, during which the LIL can continue to transmit Energy and Capacity at required reliability levels, and for greater clarity, a new Service Life will be established upon any LIL Redevelopment;

“Special GP Resolution” means a resolution approved by the requisite majority of the Board of Directors pursuant to the organizational documents of the General Partner, which majority comprises at least one Independent Director;

“Specified Dispute” has the meaning set forth in the Dispute Resolution Procedure;

“Substitute Limited Partner” has the meaning set forth in **Section 14.11(b)**;

“Sustaining Capital” means, with respect to the LIL, Expenditures of a capital nature, as determined in accordance with accounting principles applied by the PUB or other Authorized Authority, subsequent to First Commercial Power, excluding any amount related to a LIL Redevelopment or a LIL Expansion;

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

“Tax” or **“Taxes”** means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal,

foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

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

“Tax Adjustment Amount” for a particular Fiscal Year means the amount determined in accordance with the regulatory accounting policy then approved by the PUB or other Authorized Authority for such purpose, included in the Rent paid to the Partnership by Opco under the LIL Assets Agreement for such Fiscal Year, calculated to be the aggregate of the following positive or negative amounts:

- (a) the estimated Canadian federal and NL income Taxes of the holder of the Class B Limited Units in respect of such Fiscal Year arising from the holding by such holder of such Units (including, for greater certainty, any Canadian federal and NL income Taxes arising from a deemed gain by such holder of such Units during such Fiscal Year as a result of the adjusted cost base of such Units becoming negative in such Fiscal Year); plus
- (b) all other estimated Canadian federal and NL Taxes of such holder in respect of such Fiscal Year that are attributable to the holding by such holder of such Units to the extent that such other Canadian federal and NL Taxes are not otherwise recoverable by such holder; plus or minus, as the case may be,
- (c) the Tax Adjustment Amount True-Up in respect of such Fiscal Year,

provided (for greater certainty) that the computation of the Canadian federal and NL Taxes included in paragraphs (a), (b) and (c) shall:

- (d) in all respects be calculated without duplication;
- (e) take into account any Tax savings realized or to be realized by such holder for its relevant taxation year resulting from the financing of (x) the Capital Contributions made by such holder and (y) the acquisition of its Partnership Interest;
- (f) take into account any Canadian federal and NL income and other Taxes which were refunded (or are refundable or otherwise creditable against Taxes) to the holder of the Class B Limited Units, to the extent that the Taxes so refunded were included in the calculation of the Tax Adjustment Amount for any previous Fiscal Year;

- (g) not take into account any refundable Taxes or any commodity Taxes (including HST or any other sales or ad valorem Taxes) other than a non-refundable commodity Tax arising directly from the ownership of such Class B Limited Units; and
- (h) not take into account any Taxes which are assessed or reassessed in respect of a taxation year of the holder of the Class B Limited Units after the Normal Reassessment Period for such taxation year;

“Tax Adjustment Amount True-Up” has the meaning set forth in **Section 5.15**;

“Tax Indemnifying Partner” has the meaning set forth in **Sections 5.7(a)** and **10.6**;

“Tax Payment Date” has the meaning set forth in **Section 10.6(f)**;

“Taxable Income” or **“Tax Loss”**, in respect of any Fiscal Year, means, respectively, the amount of income or loss of the Partnership for such period as determined by the General Partner in accordance with the provisions of the Tax Act (including the amount of the taxable capital gain or allowable capital loss from the disposition of each capital property of the Partnership as determined by the General Partner in accordance with the provisions of the Tax Act);

“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;

“Transfer” means any sale, exchange, assignment, gift, bequest, disposition, mortgage, hypothec, charge, pledge, encumbrance, grant of security interest, short sale, grant of any option, hedging or similar transaction with the same economic effect as a sale, monetization, securitization, collateralization, delegation, merger, amalgamation or other arrangement of any nature whatsoever by which possession, legal title, beneficial ownership, voting rights or other attributes of ownership passes or may pass from one Person to another or to the same Person in a different capacity, whether or not voluntary and whether or not for value, whether directly or indirectly, and any agreement to effect any of the foregoing;

“Transfer Form” means a transfer and power of attorney form substantially in the form of **Schedule 2** or in any other form or forms as may be approved from time to time by the General Partner;

“Transmission Assets” means the LIL, the ML and the LTA;

“True-Up Distribution” in respect of a Fiscal Year, means the final distribution of Distributable Cash to Partners, as set forth in **Section 5.3(a)(iii)**;

“Undepreciated Capital Asset” at any time means the aggregate of (i) Actual Capital Costs, (ii) Actual AFUDC, and (iii) Reserves, less (iv) Capital Costs relating to Overrun Contributions (net of related depreciation), less (v) accumulated Annual Depreciation on the LIL;

“Unit” means the GP Unit, a Class A Limited Unit, a Class B Limited Unit, a Class C Limited Unit or a unit of another class of limited units created by the General Partner;

“Unit Certificate” means a certificate evidencing ownership of a Unit in such form as may be approved from time to time by the General Partner;

“Unitholder” or **“holder”** means a holder of one or more Units;

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

“Wholly-Owned Subsidiary” means, with respect to a Person, any Person in which all of the voting rights and equity interests are held and beneficially owned by such Person, either directly or indirectly through one or more Wholly-Owned Subsidiaries of such Person.

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

consent by a Party must be in writing, and such Party shall be free to take such action having regard to that Party's own interests, in its sole and absolute discretion.

Notwithstanding the foregoing the General Partner shall always act in the best interests of the Partnership and in accordance with the requirements of this Agreement.

- (m) Subsequent Agreements - Whenever this Agreement requires the Parties to attempt to reach agreement on any matter, 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. Any failure of the Parties to reach agreement where agreement is required shall constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Such a Dispute will be resolved as a Specified Dispute if so provided in this Agreement.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of NL and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 15**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of NL with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

1.5 Schedules

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

- Schedule 1 – Cost Accounting Protocol
- Schedule 2 – Form of Transfer
- Schedule 3 – Distributions Computation Examples
- Schedule 4 – Dispute Resolution Procedure

ARTICLE 2
RELATIONSHIP BETWEEN PARTNERS

2.1 Formation of the Partnership

The General Partner and Nalcor LP as the initial Limited Partner shall, concurrently with the execution of this Agreement, execute and file with the LP Registry such forms as are required or advisable to maintain the registration of the Partnership as a limited partnership pursuant to the provisions of the Act. The rights, restrictions and liabilities of the Partners shall be as provided in the Act except as herein otherwise expressly provided.

2.2 Name of the Partnership

The name of the Partnership is and shall be “Labrador-Island Link Limited Partnership” or such other name or names as the General Partner may from time to time deem appropriate to comply with the laws of the jurisdictions in which the Partnership may carry on the Business. The General Partner has the right to file an amendment to the Certificate changing the name of the Partnership.

2.3 Business of the Partnership

The business of the Partnership shall consist of the Business. The Partnership shall be further authorized to exercise all powers ancillary and incidental thereto or reasonably in furtherance thereof. The Partnership shall not carry on any other business not permitted by this **Section 2.3**.

2.4 Business in Other Jurisdictions

- (a) The Partnership shall not carry on the Business in any jurisdiction other than NL unless the General Partner has taken all steps which may be required by the laws of that jurisdiction for the Limited Partners to benefit from limited liability at least to the same extent that the Limited Partners enjoy limited liability under the Act. The Partnership shall not carry on the Business in any jurisdiction in which the laws do not recognize the liability of the Limited Partners to be limited unless, in the opinion of the General Partner, the risks associated with the possible absence of limited liability in that jurisdiction are not significant considering the relevant circumstances.

- (b) The Partnership shall carry on the Business in a manner so as to ensure, to the greatest extent possible, the limited liability of the Limited Partners, and the General Partner shall register the Partnership in other jurisdictions where the General Partner considers it appropriate to do so.

2.5 Office of the Partnership

The registered office and principal place of business of the Partnership shall be Hydro Place, 500 Columbus Drive, P.O. Box 12800, St. John's, NL A1B 0C9, or any other address in Newfoundland and Labrador as the General Partner may designate in writing from time to time to the Limited Partners.

2.6 Fiscal Year

Subject to the General Partner determining otherwise, the first Fiscal Year of the Partnership will end on December 31, 2012. Thereafter, each Fiscal Year commences on January 1 in each year and ends on the earlier of December 31 in that year or on the date of dissolution or other termination of the Partnership.

2.7 Status of Partners

- (a) The General Partner represents, warrants, covenants and agrees with each other Partner that:
 - (i) the General Partner is and shall continue to be a corporation validly incorporated under the laws of NL and is and shall continue to be validly subsisting under those laws;
 - (ii) the General Partner has and shall continue to have the full power to execute this Agreement and all other agreements contemplated hereby required to be signed by it, to act as the General Partner and to perform its obligations under this Agreement, and such execution and the performance of such obligations have been duly authorized and do not and shall not conflict with or constitute a default under its articles, by-laws or any agreement by which it is bound;
 - (iii) this Agreement has been duly authorized, executed and delivered by the General Partner and constitutes a legal, valid and binding obligation of the General Partner enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws affecting the enforcement of creditors' rights generally and general principles of equity;
 - (iv) the General Partner holds and shall maintain the registrations necessary for the conduct of its business and has and shall continue to have all licences and permits necessary to carry on its business as the General Partner of the Partnership in all jurisdictions where the activities of the Partnership require that licensing or other form of registration of the General Partner;
 - (v) the General Partner shall take all actions reasonably within its power required to qualify, continue and keep in good standing the Partnership as a limited partnership and to maintain the limited liability of each Limited

Partner in each jurisdiction where the Partnership may carry on business or own or lease property;

- (vi) the General Partner is and shall be a resident of Canada for purposes of the Tax Act and is not and shall not be a “non-Canadian” within the meaning of the *Investment Canada Act*;
 - (vii) the General Partner does not and, prior to the dissolution of the Partnership, shall not carry on any business other than that of acting as general partner of the Partnership in accordance with the terms hereof; and
 - (viii) the General Partner is and will be at all times a Qualified General Partner.
- (b) Each Limited Partner represents, warrants, covenants and agrees with each other Partner that such Limited Partner:
- (i) is, and shall continue to be at all times when it is a Partner, a Qualified Partner;
 - (ii) is holding its Units and Partnership Interest as principal and not as agent, trustee or otherwise on behalf of a third party; and
 - (iii) shall from time to time promptly provide to the General Partner such evidence of its status as the General Partner may reasonably request.
- (c) Each Limited Partner covenants and agrees that it shall maintain its status as a Qualified Partner and that it shall not transfer or purport to transfer the whole or any part of its Partnership Interest to any Person who is not, or would be unable to make the representation and warranty that it is, a Qualified Partner.
- (d) If at any time a Limited Partner is a non-resident of Canada for purposes of the Tax Act:
- (i) the Limited Partner shall indemnify the Partnership and all other Partners pursuant to **Section 10.6**; and
 - (ii) the General Partner may by Notice require that Limited Partner take such steps as are necessary for the Limited Partner to become a resident of Canada within 15 days of such Notice, failing which the General Partner may by further Notice require the Limited Partner to transfer its Partnership Interest to a Person which qualifies as a Qualified Partner.

If the non-resident Limited Partner fails to become a resident of Canada within 15 days of the General Partner giving the first aforesaid Notice, and fails to transfer its Partnership Interest to a Person which qualifies as a Qualified Partner within 15 days of the giving of the second aforesaid Notice,

- (iii) subject to **Section 2.7(d)(iv)**, the General Partner shall be entitled to sell such Partnership Interest on behalf of such non-resident Limited Partner on such terms and conditions as it deems reasonable and may itself become the purchaser of such Partnership Interest or may offer such Partnership Interest to Nalcor or an Affiliate of Nalcor. On any such sale (whether to the General Partner, Nalcor, any Affiliate of Nalcor or any other Person), the price shall be equal to the balance in that Partner's Capital Account. Any cost incurred by the General Partner related to the transaction shall be borne by the Limited Partner whose Partnership Interest is sold by the General Partner and may be deducted from the proceeds of such sale together with any other reasonable expenses incurred in connection therewith; or
- (iv) if the non-resident Limited Partner holds Class B Limited Units and becomes a non-resident of Canada for the purposes of the Tax Act only as a result of:
 - (A) actions taken by the General Partner or any other Person (including, for greater certainty, an action of an Authorized Authority) other than as a result of an action of the non-resident Limited Partner or an Affiliate of the non-resident Limited Partner ; or
 - (B) a change in Applicable Law,and the non-resident Limited Partner could not reasonably prevent its becoming a non-resident of Canada or could not reasonably thereafter become a resident of Canada, the General Partner shall not be entitled to exercise the option set out in **Section 2.7(d)(iii)** but shall be entitled to:
 - (C) proceed with the retirement of such non-resident Limited Partner pursuant to **Section 3.12** (upon obtaining the necessary consent required therein); or
 - (D) require Nalcor LP to exercise any continuing option to acquire the Partnership Interest of such non-resident Limited Partner available to it pursuant to any agreement then in force and binding upon such non-resident Limited Partner.

2.8 Survival of Representations, Warranties and Covenants

The representations, warranties and covenants made pursuant to **Section 2.7** shall survive execution of this Agreement, and each Partner covenants and agrees to ensure that each representation, warranty and covenant made pursuant to **Section 2.7** remains true so long as it remains a Partner.

2.9 Limitation on Authority of Limited Partners

No Limited Partner (except a Limited Partner who is also the General Partner) shall or shall be entitled to:

- (a) take part in the administration, control, management or operation of the business of the Partnership or exercise any power in connection with that control or management or transact business on behalf of the Partnership;
- (b) other than by voting on a resolution of the Limited Partners, execute any document which binds or purports to bind any other Partner or the Partnership;
- (c) hold itself out as having the power or authority to bind any other Partner or the Partnership;
- (d) have any authority or power to act for or undertake any obligation or responsibility on behalf of any other Partner or the Partnership;
- (e) bring any action for partition or sale or otherwise in connection with the Partnership, or any interest in any property of the Partnership, whether real or personal, tangible or intangible, or file or register or permit to be filed, registered or remain undischarged any lien or charge in respect of any property of the Partnership;
- (f) compel or seek a partition, judicial or otherwise, of any of the assets of the Partnership distributed or to be distributed to the Partners in kind in accordance with this Agreement; or
- (g) take any action which will jeopardize or eliminate the status of the Partnership as a limited partnership under the Act,

and any action by any Limited Partner which purports to do so will be null, void and of no force or effect. For greater certainty, the General Partner has the exclusive power, right, obligation and authority to bind the Partnership, and the General Partner shall not be subject to the restrictions that apply to Limited Partners.

2.10 Power of Attorney

- (a) Each Limited Partner hereby irrevocably nominates, constitutes and appoints the General Partner, with full power of substitution, as that Limited Partner's agent and true and lawful attorney to act on the Limited Partner's behalf with full power and authority in the Limited Partner's name, place and stead to execute and record or file as and where required:
 - (i) (A) this Agreement;
 - (B) any amendment to this Agreement (subject to required Partner approval, if any); and

(C) any other instruments or documents,

but only to the extent required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property, in order to maintain the limited liability of the Limited Partners and to comply with the Applicable Law of that jurisdiction (including any amendments to the Certificate or the Register as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of a Partnership Interest as contemplated by this Agreement);

- (ii) all instruments and any amendments to the Certificate necessary to reflect any amendment to this Agreement;
 - (iii) any instrument required in connection with the dissolution and termination of the Partnership in accordance with the provisions of this Agreement, including any elections, determinations or designations in respect of such dissolution and termination under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province or jurisdiction;
 - (iv) the documents necessary to be filed with the appropriate Authorized Authority in connection with the Business, property, assets and undertaking of the Partnership;
 - (v) the documents on the Limited Partner's behalf and in the Limited Partner's name as may be necessary to give effect to the admission of a subscriber for or transferee of a Partnership Interest in the Partnership;
 - (vi) any election, determination, designation, information return or similar document or instrument as may be required or desirable at any time under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province or jurisdiction which relates to the affairs of the Partnership or its Affiliates or the interest of any Person in the Partnership; and
 - (vii) all other instruments and documents on the Partner's behalf and in the Limited Partner's name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully this Agreement in accordance with its terms.
- (b) To evidence the foregoing, each subscription agreement and Transfer Form will contain a power of attorney incorporating by reference, ratifying and confirming the powers described above.
- (c) The power of attorney granted in this Agreement is irrevocable and is a power coupled with an interest and is given for consideration and will survive the transfer

or assignment by the Limited Partner of the whole or any part of the interest of the Limited Partner in the Partnership and extends to the successors, transferees and assigns of the Limited Partner and may be exercised by the General Partner on behalf of each Limited Partner by executing any instrument by a facsimile signature or by listing all the Partners and executing that instrument with a single signature as attorney and agent for all of them.

- (d) Each Limited Partner agrees to be bound by any representation or action made or taken by the General Partner with respect to such Limited Partner pursuant to this power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under this power of attorney.
- (e) The power of attorney will continue in respect of the General Partner so long as it is the general partner of the Partnership, and will terminate thereafter, but will continue in respect of a new General Partner as if the new General Partner were the original attorney.
- (f) A purchaser or transferee of a Partnership Interest will, upon becoming a Limited Partner, be conclusively deemed to have acknowledged and agreed to be bound by the provisions of this Agreement as a Limited Partner and will be conclusively deemed to have provided the General Partner with the power of attorney described in this **Section 2.10**.

2.11 Unlimited Liability of General Partner

The General Partner has unlimited liability for the debts, liabilities and obligations of the Partnership.

2.12 Limited Liability of Limited Partners

Subject to the provisions of the Act and of similar applicable legislation in any other applicable jurisdiction, the liability of a Limited Partner for the debts, liabilities and obligations of the Partnership at any relevant time is limited to the amount of property the Limited Partner has contributed or agreed to contribute to the capital of the Partnership, plus the Limited Partner's entitlement in accordance with this Agreement to share in any undistributed income of the Partnership. Following payment of a Limited Partner's required Capital Contributions, the Limited Partner will not be liable for any further claims or assessments or be required to make further contributions to the Partnership, except that, where a Limited Partner has received the return of all or part of that Limited Partner's Capital Contributions, the Limited Partner is nevertheless liable to the Partnership or, where the Partnership is dissolved, to its creditors, for any amount, not in excess of the amount returned with interest at the Prime Rate, necessary to discharge the liabilities of the Partnership to all creditors who extended credit or whose claims otherwise arose before the return of the Capital Contributions. Nothing herein shall be interpreted or construed as requiring the General Partner to make any cash call or as requiring a Limited Partner to make Capital Contributions unless such Limited Partner has entered into an agreement to make such Capital Contributions.

2.13 **Compliance with Laws**

Each Limited Partner shall, on the request of the General Partner from time to time, promptly execute any documents considered by the General Partner to be necessary to comply with any Applicable Law or for the continuation, operation or good standing of the Partnership.

2.14 **Restricted Ability of General Partner to Hold Partnership Interest**

Except as provided in **Section 4.1** or for the purposes of **Section 2.7(d)**, the General Partner shall not subscribe for or acquire the whole or any part of a Partnership Interest or purchase the whole or any part of a Partnership Interest by private contract.

2.15 **General Partner as a Limited Partner**

If the General Partner holds any Partnership Interest as a Limited Partner, it will be deemed in such capacity to be a Limited Partner with the same rights and powers and subject to the same restrictions as each other Limited Partner.

2.16 **Prohibition of Limited-Recourse Financing by Limited Partners**

Each Limited Partner agrees not to finance any portion of any Capital Contribution to the Partnership with borrowing that would be a Limited-Recourse Amount.

2.17 **Remuneration of General Partner**

Other than reimbursements and Distributions to which it is expressly entitled under this Agreement, the General Partner is not entitled to receive any remuneration in respect of the exercise of its powers or the performance of its duties and obligations under this Agreement.

ARTICLE 3
PARTNERSHIP INTERESTS

3.1 **Authorized Units**

The Partnership is authorized to issue a single GP Unit, an unlimited number of Class A Limited Units, an unlimited number of Class B Limited Units, an unlimited number of Class C Limited Units, and an unlimited number of any other class of limited Units that the General Partner may determine to create.

3.2 **Characteristics of and Rights Attaching to Limited Units**

- (a) In respect of Class A Limited Units held by it, each Unitholder shall have the following rights and obligations:
 - (i) the right to one vote for each Class A Limited Unit held;
 - (ii) subject to the provisions of any Restrictive Agreement and to any other restrictions contained in this Agreement:

- (A) the right to receive, and it shall be the obligation of the Partnership to pay in accordance with **Section 5.3(a)(i)**, a Periodic Distribution in respect of each such Class A Limited Unit ("**Class A Periodic Distribution**");
 - (B) the right to receive, and it shall be the obligation of the Partnership to pay in accordance with **Section 5.3(a)(iii)**, a True-Up Distribution in respect of each such Class A Limited Unit ("**Class A Annual True-Up Distribution**");
 - (C) the right to receive, and it shall be the obligation of the Partnership to pay, an amount equal to the Income on Prepaid Rent received pursuant to the terms of the LIL Assets Agreement (which is to be included in the Class A Periodic Distributions and the Class A Annual True-Up Distributions, as applicable); and
 - (D) if a Unit is issued, or a Capital Contribution is made, at any time other than the first day of a period, the amount payable hereunder shall be prorated appropriately;
- (iii) the right to share in the remaining assets of the Partnership in a liquidation in accordance with **Section 3.2(d)**;
 - (iv) the right to receive such part of the Net Income earned by the Partnership in respect of each Fiscal Year as determined in accordance with **Section 5.1**;
 - (v) the obligation to accept an allocation of such part of a Net Loss incurred by the Partnership in respect of each Fiscal Year as is equal to such Unitholder's Proportionate Interest; and
 - (vi) the other obligations imposed upon Unitholders by this Agreement.
- (b) In respect of Class B Limited Units held by it, each Unitholder shall have the following rights and obligations:
- (i) the right to one vote for each Class B Limited Unit held;
 - (ii) subject to the provisions of any Restrictive Agreement and to any other restrictions contained in this Agreement:
 - (A) the right to receive, and it shall be the obligation of the Partnership to pay in accordance with **Section 5.3(a)(i)**, a Periodic Distribution in respect of each such Class B Limited Unit ("**Class B Periodic Distribution**");
 - (B) the right to receive, and it shall be the obligation of the Partnership to pay in accordance with **Section 5.3(a)(iii)**, a True-Up Distribution

in respect of each such Class B Limited Unit (“**Class B Annual True-Up Distribution**”);

- (C) the right to receive, and it shall be the obligation of the Partnership to pay, an amount equal to the Tax Adjustment Amount received pursuant to the terms of the LIL Assets Agreement (which is to be included in the Class B Periodic Distributions and the Class B Annual True-Up Distributions, as applicable); and
 - (D) if a Unit is issued, or a Capital Contribution is made, at any time other than the first day of a period, the amount payable hereunder shall be prorated appropriately;
 - (iii) the right to share in the remaining assets of the Partnership in a liquidation in accordance with **Section 3.2(d)**;
 - (iv) the right to receive such part of the Net Income earned by the Partnership in respect of each Fiscal Year as determined in accordance with **Section 5.1**;
 - (v) the obligation to accept an allocation of such part of a Net Loss incurred by the Partnership in respect of each Fiscal Year as is equal to such Unitholder's Proportionate Interest; and
 - (vi) the other obligations imposed upon Unitholders by this Agreement.
- (c) In respect of Class C Limited Units held by it, each Unitholder shall have the following rights and obligations:
- (i) the Class C Limited Units do not carry the right to vote in any circumstances;
 - (ii) the Class C Limited Units do not carry the right to receive any Distribution in any circumstances;
 - (iii) the Class C Limited Units have the right to share in the remaining assets of the Partnership in a liquidation in accordance with **Section 3.2(d)**; and
 - (iv) except in respect of depreciation related to assets acquired with the proceeds of the issue of Class C Limited Units, the Class C Limited Units shall not be allocated any part of Net Losses incurred, nor shall they have any entitlement to share in any of the Net Income earned, by the Partnership in respect of a Fiscal Year.
- (d) Upon the dissolution of the Partnership, after the payment of all of the debts and obligations of the Partnership:
- (i) the holders of the Class A Limited Units and the holders of the Class B Limited Units, if any, shall be entitled to receive, and it shall be the obligation of the Partnership to pay to them, the full amount of the Class A

Limited Unit Capital Account and the Class B Limited Unit Capital Account respectively, together with any accrued but unpaid Class A Periodic Distributions or Class B Periodic Distributions respectively, before any distribution is made on the Class C Limited Unit Capital Account;

- (ii) once the full amount of the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account, together with any accrued but unpaid Class A Periodic Distributions and Class B Periodic Distributions have been paid to the holders of the Class A Limited Units and the Class B Limited Units respectively, the holders of the Class C Limited Units shall be entitled to receive, and it shall be the obligation of the Partnership to pay to them, the full amount of the Class C Limited Unit Capital Account;
- (iii) if, for any reason, the full amount of the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account, together with any accrued but unpaid Class A Periodic Distributions and Class B Periodic Distributions, cannot be repaid on a dissolution, it shall be the obligation of the Partnership to pay to the holders of the Class A Limited Units and the holders of the Class B Limited Units respectively their pro rata shares (based on the amount of each such Capital Account compared to the total amount of the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account) of such amount as is available for such purpose, and in that event no payment shall be made to the holders of the Class C Limited Units;
- (iv) if, for any reason, the full amount of the Class C Limited Unit Capital Account cannot be repaid on a dissolution, it shall be the obligation of the Partnership to pay to the holders of the Class C Limited Units their pro rata shares (based on the amount of their respective Capital Contributions to the outstanding balance of the Class C Limited Unit Capital Account of such amount as is available for such purpose); and
- (v) if, after the payments provided for in **Sections 3.2(d)(i) and (ii)**, there remain any undistributed assets of the Partnership, such assets shall be distributed:
 - (A) as to \$100.00, to the General Partner; and
 - (B) as to any balance, to the holders of the Class A Limited Units and the holders of the Class B Limited Units respectively their pro rata shares (based on the amount of each such Capital Account compared to the total amount of the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account at the commencement of the liquidation).

3.3 Characteristics of and Rights Attaching to the GP Unit

In respect of the GP Unit held by it, the General Partner shall have the following rights and obligations:

- (a) the right to one vote at any meeting of the Partners;
- (b) subject to the provisions of any Restrictive Agreement and to any other restrictions contained in this Agreement, the right to receive Distributions up to the maximum amount allocated to the General Partner in accordance with **Section 5.2(b)**;
- (c) the right to share in the remaining assets of the Partnership in a liquidation as provided in **Section 3.2(d)(v)(A)**;
- (d) the right to receive 0.0001% of the Net Income earned by the Partnership in respect of each Fiscal Year;
- (e) the obligation to accept an allocation of 0.0001% of Net Losses incurred by the Partnership in respect of each Fiscal Year; and
- (f) the other obligations imposed upon Unitholders by this Agreement.

3.4 Admittance as Partner

- (a) The General Partner, whenever it determines that it is in the best interests of the Partnership to do so, but subject to **Section 3.4(c)**, may admit as a Limited Partner a Person which makes all of the representations set out in **Section 2.7(b)** and enters into a subscription agreement in a form satisfactory to the General Partner.
- (b) Upon acceptance by the General Partner of any duly completed subscription agreement, all Partners will be deemed (if the subscriber is not then a Partner) to have consented to the admission of the subscriber as a Partner and all of the Limited Partners hereby appoint the General Partner as their duly authorized agent and attorney with power and discretion to consent to admission of any Partner. The General Partner shall execute this Agreement on behalf of the subscriber and shall cause the Certificate to be amended and filed under the Act, and any other documents as may be required by the Act or under legislation similar to the Act in other provinces to be filed or amended, specifying the prescribed information, and shall cause the foregoing information in respect of the new Partner to be included in other Partnership books and records.
- (c) Notwithstanding any other provision of this Agreement:
 - (i) no portion of the Capital Contribution of a Person (other than the holder of the Class B Limited Units) who becomes a Limited Partner after the Effective Date may be utilized by the General Partner for any purpose connected with or related to the Business (as that word is defined in Recital B as of the Effective Date); and
 - (ii) no Person (other than the holder of the Class B Limited Units) who becomes a Limited Partner after the Effective Date shall receive any allocation of Net Income or Taxable Income or any Distribution arising from or in any way

attributable to the Business (as that word is defined in Recital B as of the Effective Date),

except to the extent that such Person becomes a Limited Partner as a result of the transfer to such Person of a Partnership Interest from either the holder of the Class A Limited Units or the holder of the Class B Limited Units.

3.5 Effective Date of Admittance

The rights and obligations of a subscriber as a new Partner under this Agreement commence and are enforceable by and upon the new Partner as between the new Partner and the other Partners from the date on which the Certificate is amended and filed, as required under the Act, adding that new Partner as a Partner of the Partnership, and Units in respect of which a subscription agreement has been accepted by the General Partner will then be deemed to be issued.

3.6 Register of Partners

The General Partner shall maintain, or cause to be maintained, a register (the “**Register**”) to record the names and addresses of the Limited Partners, the number of Units and class of Units held by each Limited Partner, particulars of registration and assignment of Units and all other information required to be included by the Act. The General Partner may appoint any Person to maintain such Register.

3.7 Changes in Membership of Partnership

No change of name or address of a Partner and no transfer of the whole or any part of a Partnership Interest and no admission of a Partner to the Partnership will be effective for the purposes of this Agreement until all reasonable requirements as determined by the General Partner with respect to that change, transfer or admission have been met, including the requirements set out in this **Section 3.7** and in **Section 2.7**, and until that change, transfer or addition is duly reflected in an amendment to the Register and the Certificate as may be required by the Act. The names and addresses of the Partners as reflected from time to time in the Certificate, as from time to time amended, will be conclusive as to those facts for all purposes of the Partnership.

3.8 Inspection of Register

A Partner, or an agent of a Partner duly authorized in writing, has the right to inspect and make copies from the Register during Regular Business Hours.

3.9 Unit Certificates

- (a) The General Partner shall issue to each Limited Partner, upon request, a Unit Certificate indicating that the holder of the Unit Certificate is the owner of the number and class of Units set out on the Unit Certificate.

- (b) Every Unit Certificate must be signed by at least one officer or director of the General Partner.
- (c) If any Unit Certificate is lost, mutilated, stolen or destroyed, the General Partner shall, upon request by a Partner, issue a replacement Unit Certificate to the Partner upon receipt of evidence satisfactory to the General Partner of that loss, mutilation, theft or destruction, and upon receiving an indemnity bond provided at the expense of the Partner as it deems appropriate in the circumstances.
- (d) The General Partner, upon request by the transferee, shall issue a new Unit Certificate for any Units transferred in compliance with the terms of this Agreement. In the case of a transfer of less than all of the Units represented by a Unit Certificate, the General Partner, upon request by the transferor, shall issue a new Unit Certificate for the balance of the Units retained by the transferor.
- (e) Each Unit Certificate shall include a legend referring to the restrictions on transfer contained in **Article 14**.

3.10 No Multiple Registered Ownership of Partnership Interest

No Partnership Interest or Unit may be registered in the name of more than one Person.

3.11 Securities Transfer Legislation

Pursuant to the STA:

- (a) each Unit now or hereafter issued by the Partnership shall for all purposes be a “security” within the meaning of the STA; and
- (b) each Unit Certificate now or hereafter issued by the Partnership shall for all purposes be a “certificated security” within the meaning of the STA,

and the STA shall apply to each such Unit and Unit Certificate, without exception, regardless of the date of issuance of each such Unit or Unit Certificate or whether, in the case of such Unit Certificate, it contains an express endorsement to that effect or not.

3.12 Mandatory Limited Partner Retirement

At any time, the General Partner shall, upon being so directed by the unanimous written consent of the Limited Partners, proceed with the retirement hereunder (the “**Retirement**”) of a specified Limited Partner which holds only Class B Limited Units (the “**Retired Limited Partner**”) and shall redeem all of the Class B Limited Units held by such Retired Limited Partner (the “**Redeemed Units**”) in accordance with the following provisions:

- (a) Within one day of the receipt of the unanimous written consent of the Limited Partners, the General Partner shall give to the Retired Limited Partner a Notice (the “**Notice of Retirement**”) setting out the effective date of the Retirement (the “**Date**”

of Retirement") (which may be the date of the Notice of Retirement or such other date specified therein which shall be no later than 60 days after the date of the Notice of Retirement), the number of Class B Limited Units called for redemption hereunder as a result of the Retirement and the place where the certificates evidencing the Redeemed Units shall be surrendered for cancellation by the Retired Limited Partner prior to being entitled to receive the Retirement Payments as hereafter defined and provided. The Notice of Retirement shall be accompanied by a statement (the "**Retirement Statement of Account**") showing, with reasonable detail, the balance of the Retired Limited Partner's Capital Account in respect of all Redeemed Units held at such time by such Retired Limited Partner as determined by the General Partner, less any amounts then owing by such Retired Limited Partner, or an Affiliate thereof, to the Partnership and any amounts owing by the Retired Limited Partner, or an Affiliate thereof, under this Agreement or any other agreement relating to the Retired Limited Partner's Partnership Interest at such time.

- (b) Effective on the Date of Retirement, all Class B Limited Units called for redemption under the Notice of Retirement shall be redeemed and automatically cancelled, in consideration of the Partnership's obligation to pay to the Retired Limited Partner the sum of \$1.00 (the "**Redemption Price**") and to make such further Retirement Payments as the Retired Limited Partner may be entitled to, in accordance with the terms of this **Section 3.12**.
- (c) Subject to **Section 3.12(d)**, the Partnership shall:
 - (i) allocate, in each Fiscal Year, for the remainder of the Service Life of the LIL, Net Income to the Retired Limited Partner; and
 - (ii) shall subject to **Section 5.5** and **Section 5.6**, make payments to the Retired Limited Partner, as a retired Partner,

equal to the amounts such Retired Limited Partner would have been allocated or received as Distributions, in each such Fiscal Year, had the Retirement not occurred (including, if applicable, any payments in the amount of the Class B Annual True-Up Distributions which would have been allocated and distributed on the Class B Limited Units for each such Fiscal Year had the Class B Limited Units not been redeemed pursuant to this Section) (collectively, the "**Retirement Payments**"). Subject to **Sections 5.5** and **5.6**, the Retirement Payments will be made to the Retired Limited Partner at such times and in such amounts as the Partnership would, but for the Retirement, otherwise have made the Class B Periodic Distributions and the Class B Annual True-Up Distributions, provided that any such annual Retirement Payments shall be reduced by any amounts then owing by the Retired Limited Partner, or an Affiliate thereof, to the Partnership under this Agreement or under any other agreement relating to the Retired Limited Partner's Partnership Interest at such time. Any amount due and unpaid on the Date of Retirement with respect to prior Distributions on the Redeemed Units and any Class B Annual True-Up

Distribution thereon with respect to a period prior to the Date of Retirement which becomes due and payable on a date subsequent to the Date of Retirement shall become respectively payable as Retirement Payments at the same time and in the same amount as the Partnership would, but for the Retirement, have been required to make such payment to the Retired Limited Partner.

- (d) As and from the Date of Retirement, the Retired Limited Partner shall cease to be a Partner and to have any rights or obligations as such, its sole right being to receive the Redemption Price and the Retirement Payments as a consequence of its Retirement under this Section, if and as same may become due, as a creditor of the Partnership ranking subordinate to the rights of all other creditors and *pari passu* with the rights of holders of Class A Limited Units (in the same amount and to the same extent as if the redemption of the Redeemed Units had not occurred), provided more specifically that for such purposes, *mutatis mutandis*:
 - (i) the Retired Limited Partner shall be dealt with in the same manner as a holder of Class B Limited Units for the application of **Sections 2.7, 4.3, 4.4, 4.5, 5.1, 5.2, 5.4(a), 5.4(c), 5.7, 5.8, 5.9, 9.1, 9.2, 10.1, 10.5, 15.1 and 16.11**;
 - (ii) the calculations under **Section 3.2(d)** and **Article 5** (including any relevant definitions or provisions referred to therein), shall be made as if the Partnership continued to maintain a Class B Limited Capital Account with respect to the Redeemed Units, which deemed Class B Limited Unit Capital Account shall be reduced by any portions of the Retirement Payments which would, if such payments were Distributions, be deemed to be paid out of Capital Account under **Section 5.12**; and
 - (iii) any due and unpaid Retirement Payment shall be dealt with as if such amount was an accrued and unpaid Distribution on Class B Limited Units.
- (e) Any Dispute between the Parties concerning the Retirement, the Retirement Statement of Account or Retirement Payments shall be subject to the Dispute Resolution Procedure, provided that no such Dispute by the Retired Partner shall invalidate, stay or delay the Retirement, whether or not such Dispute has then been made the subject of proceedings under the Dispute Resolution Procedure.
- (f) As set forth in the Retirement Notice or as may otherwise be requested by the General Partner, the Retired Limited Partner shall deliver to the General Partner:
 - (i) certificates representing all of the Redeemed Units; and
 - (ii) such forms of assignment, consents under Restrictive Agreements or other documents as may be required by the General Partner in order to evidence the redemption of the Retired Limited Partner's Redeemed Units.
- (g) It is the intention of the Parties that Section 96(1.1) and Section 98.1 of the Tax Act apply to the Retired Limited Partner and to the Retirement Payments.

ARTICLE 4
CAPITAL CONTRIBUTIONS AND ACCOUNTS

4.1 **General Partner Contribution**

The General Partner shall forthwith upon filing of the Certificate with the LP Registry contribute the sum of \$100.00 to the capital of the Partnership (in respect of which the GP Unit will be issued) and is not required to make any further Capital Contributions.

4.2 **Limited Partner Contributions and Establishment of Capital Accounts**

- (a) Nalcor LP shall forthwith upon filing of the Certificate with the LP Registry contribute the sum of \$1.00 to the capital of the Partnership and shall be issued in respect thereof, one Class C Limited Unit and a Class C Limited Unit Capital Account shall be established by the Partnership to evidence the Partnership Interest of Nalcor LP. Forthwith after such subscription and at such time as the holder of Class C Limited Units makes a Capital Contribution in respect of such Units, new Class C Limited Units shall be issued to such Unitholder on the basis of one Class C Limited Unit for each \$1.00 contributed.
- (b) Class A Limited Units shall be issued in accordance with a subscription agreement to be executed by the General Partner and a subscriber in form satisfactory to the General Partner (which satisfaction shall be evidenced by its execution thereof) and a Class A Limited Unit Capital Account shall be established by the Partnership to evidence the Partnership Interest of such Unitholder.
- (c) Forthwith after LIL Sanction, Class B Limited Units shall be issued in accordance with a subscription agreement to be executed by the General Partner and a subscriber in form satisfactory to the General Partner (which satisfaction shall be evidenced by its execution thereof) and a Class B Limited Unit Capital Account shall be established by the Partnership to evidence the Partnership Interest of such Unitholder.

4.3 **Adjustments to Capital Account**

The Net Income, Capital Contributions and other amounts with which a Partner is to be credited pursuant to this Agreement and the Net Loss, returns of Capital Contributions and Distributions with which a Partner is to be debited pursuant to this Agreement shall be credited and debited to that Partner's Capital Account, as provided in this Agreement.

4.4 **No Right to Withdraw Amounts**

No Partner will have any right to withdraw any amount or receive any Distribution from the Partnership except as expressly provided for in this Agreement (including for the avoidance of doubt, any undistributed portion of the Distributable Cash which remains undistributed after a Periodic Distribution). If any decision made in accordance with the Dispute Resolution Procedure at any time determines that, notwithstanding the provisions of this Agreement, a Limited Partner is obligated to pay any amount distributed to such Limited Partner to

or for the account of the Partnership or to any creditor of the Partnership, then such obligation shall be the obligation of such Limited Partner and not of the General Partner.

4.5 No Interest Payable on Capital

No Partner will have the right to receive interest on any positive balance of its Capital Account except as expressly provided in this Agreement.

4.6 Negative Balance of Capital

The Partnership Interest of a Partner will not terminate by reason of there being a negative or zero balance of such Partner's Capital Account.

**ARTICLE 5
DISTRIBUTIONS AND WITHHOLDING**

5.1 Allocations Among Limited Partners

The principles agreed by the Parties regarding allocations among Limited Partners are as follows:

- (a) allocations of Net Income or Net Loss shall occur on a monthly basis;
- (b) revenues related to the Tax Adjustment Amount shall be allocated exclusively to the holder of the Class B Limited Units;
- (c) Income on Prepaid Rent shall be allocated exclusively to the holder of the Class A Limited Units;
- (d) any expense pertaining to depreciation of the assets related to Overrun Contributions shall be allocated exclusively to the holder of the Class C Limited Units; and
- (e) all other Net Income or Net Loss of the Partnership shall be allocated based upon the Proportionate Interests of the Unitholders.

5.2 Allocation and Priority of Distributions

Any Distribution made to the Partners shall be distributed in a proportion of:

- (a) 99.9999% to the Limited Partners; and
- (b) 0.0001% to the General Partner.

5.3

Certain Mandatory Distributions

- (a) Subject to the restrictions set forth in **Sections 5.5** and **5.6(a)** and limitations which may be imposed on the Partnership to make Distributions pursuant to any Restrictive Agreements:
- (i) in each Fiscal Year after First Commercial Power, the General Partner shall cause the Partnership to make Periodic Distributions with respect to each Interim Period to the Partners within three Business Days following the end of such Interim Period in the amount set forth in the Annual Distributable Cash Budget (as from time to time adjusted, if **Section 5.4(c)** is applicable) in respect of such Interim Period (the “**Budgeted Distribution**”);
 - (ii) no Periodic Distribution may, in respect of any Interim Period prior to First Commercial Power, exceed 100% of the Income on Prepaid Rent actually received during such Interim Period; and
 - (iii) following the approval by Ordinary Resolution of the audited financial statements by the Limited Partners in respect of any given Fiscal Year after First Commercial Power, at the time determined by the General Partner but no later than the end of the second calendar quarter to occur following the Fiscal Year, the General Partner shall cause the Partnership to make a True-Up Distribution in an amount equal to 100% of the positive amount, if any, by which:
 - (A) the Distributable Cash for such Fiscal Year as determined by the General Partner following the approval of the audited financial statements exceeds
 - (B) the sum of all Periodic Distributions made in respect of each Interim Period included in such Fiscal Year (other than a True-Up Distribution);
- (b) On any Distribution, the Distributable Cash shall be allocated and paid in the following order of priority:
- (i) the holders of the Class B Limited Units shall receive an amount equal to that part of the Tax Adjustment Amount that is applicable to such Distribution;
 - (ii) the holders of the Class A Limited Units shall receive an amount equal to the Income on Prepaid Rent actually received that is applicable to such Distribution;
 - (iii) on a *pari passu* basis:
 - (A) the holders of the Class A Limited Units shall receive an amount equal to their Proportionate Interests multiplied by the amount of

Distributable Cash remaining after the payments contemplated in **Sections 5.3(b)(i) and (ii)**; and

- (B) the holders of the Class B Limited Units shall receive an amount equal to their Proportionate Interests multiplied by the amount of Distributable Cash remaining after the payments contemplated in **Sections 5.3(b)(i) and (ii)**.
- (c) Periodic Distributions and True-Up Distributions will occur on the same day as, but after the payment of, the periodic debt service payments required by the Financing Documents.
- (d) Any Budgeted Distribution that is unpaid after the payment of the Class A Annual True-Up Distribution and the Class B Annual True-Up Distribution shall thereupon cease to be payable by the Partnership and the Unitholder's right to receive such unpaid amount shall be wholly terminated and extinguished.

5.4 Annual Distributable Cash Budget and Adjustments to Budgeted Distributions

- (a) At least 45 days before the commencement of any given Fiscal Year, the General Partner shall prepare and deliver to the Limited Partners an annual budget of projected Distributable Cash in respect of such Fiscal Year and Interim Periods included therein (such budget, as amended from time to time in accordance with the terms of this **Section 5.4**, the "**Annual Distributable Cash Budget**").
- (b) The Annual Distributable Cash Budget shall, on the basis of the Distributable Cash projected therein, show the Budgeted Distributions to be made in respect of such Fiscal Year and such related Interim Periods. The General Partner shall determine the Budgeted Distributions in respect of such Interim Periods exercising commercially reasonable judgment and using a conservative approach.
- (c) If, at any time in the course of a Fiscal Year, the General Partner anticipates, based on its commercially reasonable judgment and using a conservative approach, that the Distributable Cash projected in the related Annual Distributable Cash Budget is significantly lower or greater than the then budgeted Distributable Cash, then the General Partner may make all such adjustments as it reasonably considers appropriate to the Annual Distributable Cash Budget and, accordingly, increase or decrease the amount of remaining Budgeted Distributions. The General Partner shall promptly deliver to the Limited Partners any adjusted Annual Distributable Cash Budget along with a written statement explaining in reasonable detail the basis for any adjustments.

5.5 Restrictions on Distributions

Notwithstanding the provisions of **Section 5.3**, if at the time of any Distribution the Partnership is prohibited under a Restrictive Agreement from making a Distribution or if the payment of such Distribution would result in a default under the terms of a Restrictive Agreement,

the Partnership shall not make any such Distribution as of such date and the making of such Distribution shall be delayed until such time as the Partnership is no longer prohibited from making a Distribution under the terms of the Restrictive Agreement.

5.6 Overriding Provisions

- (a) Limitation on Distributions - Notwithstanding any other provision of this Agreement to the contrary, Distributions shall be made only to the extent in compliance with Applicable Law and, except upon the dissolution and liquidation of the Partnership in accordance with **Article 11**, only to the extent of Distributable Cash.
- (b) Withdrawal of Capital Account - Except as to the capital portion of any Distribution or as otherwise expressly provided in this Agreement:
 - (i) no Partner shall have the right to withdraw any part of its Capital Contribution from the Partnership or to receive any Distribution or return of such Partner's Partnership Interest and no interest shall be payable in respect thereof; and
 - (ii) except with the consent of the Unitholder, the General Partner may not compel the withdrawal by or return to a Partner of all or any part of such Partner's Capital Account or other return of such Partner's Partnership Interest other than the return of any of the Partner's Capital Account in the ordinary course of maintaining the Partnership DER as Distributions occur.
- (c) Distribution in Cash Only - For the avoidance of doubt, any and all Distributions made by the Partnership pursuant to this Agreement shall be made in cash.

5.7 Withholding

- (a) Notwithstanding anything expressed or implied to the contrary in this Agreement, the General Partner is authorized to take any action that it determines, acting reasonably, to be necessary or appropriate to cause the Partnership to comply with any withholding and remittance requirement of an Authorized Authority with respect to any allocation, payment or Distribution by the Partnership to any Partner or other Person. Any amount so withheld and remitted in respect of a Distribution shall be treated as and shall conclusively be deemed to be a Distribution to the applicable Partner under the applicable provision of this Agreement. If any such withholding requirement with respect to any Partner exceeds the amount distributable to such Partner under this Agreement, or if any such withholding requirement was not satisfied with respect to any amount previously allocated, paid or distributed to such Partner, such Partner (including for avoidance of doubt any successor or assignee) (in this **Section 5.7** and in **Section 10.6** as it applies to this **Section 5.7**, the "**Tax Indemnifying Partner**") shall indemnify and hold harmless the other Partners and the Partnership for such excess amount or such withholding requirement, as the case may be (including any costs, interest and penalties except to the extent that any such costs, interest and penalties have arisen as a result of

the gross negligence or wilful misconduct of the General Partner, in which case the General Partner shall be liable for such costs, interest and penalties) (in this **Section 5.7** and in **Section 10.6** as it applies to this **Section 5.7**, the “**Indemnified Tax**”).

- (b) The General Partner shall reasonably cooperate with any Limited Partner entitled to obtain a refund of Taxes or a reduction of withholding Taxes addressed under this **Section 5.7**.
- (c) **Sections 10.6(e) to 10.6(h)** shall apply, *mutatis mutandis*, in respect of any Indemnified Tax addressed under this **Section 5.7**.

5.8 Allocation of Taxable Income

Taxable Income in respect of any Fiscal Year will be allocated as at the end of such Fiscal Year as to 99.9999% to the Limited Partners, in accordance with the principles of **Section 5.1**, and as to 0.0001% to the General Partner.

5.9 Allocation of Tax Loss

Tax Loss in respect of any Fiscal Year will be allocated as at the end of such Fiscal Year as to 99.9999% to the Limited Partners, in accordance with the principles of **Section 5.1**, and as to 0.0001% to the General Partner.

5.10 Discretionary Deductions

- (a) The General Partner shall have discretion to make any election under the Tax Act and claim any amount of deductions available for purposes of determining Taxable Income in each Fiscal Year, provided that the General Partner shall take all reasonable steps as are necessary to ensure that:
 - (i) the Taxable Income of the Partnership for each Fiscal Year shall be sufficient to permit the minimum allocations set out in Sections **5.10(a)(ii)** and **(iii)**;
 - (ii) the Taxable Income allocated to each Limited Partner in respect of each Fiscal Year shall not be less than \$1.00; and
 - (iii) the Taxable Income allocated to the holder of the Class B Limited Units in respect of each Fiscal Year shall not be less than 110% of such holder’s projected administrative expenses as determined in accordance with **Section 5.10(b)**.
- (b) The holder of the Class B Limited Units shall, not later than 90 days prior to the commencement of each Fiscal Year, deliver to the General Partner a Notice setting out such holder’s estimate of its projected expenses for such Fiscal Year in respect of reasonable administrative costs to be incurred as a result of the holding of such Units (including costs of accounting, legal and other professional advisors and internal Overhead allocations determined in a manner consistent with Article 5.0 of

the Cost Accounting Protocol). The General Partner shall have a period of 30 days after receipt of such Notice to determine whether to accept the Class B Limited Unit holder's estimate of such expenses or to refer the estimate for resolution as a Specified Dispute pursuant to the Dispute Resolution Procedure. The Class B Limited Unit holder's estimate of such expenses (if accepted by the General Partner without dispute) or the amount determined pursuant to the Dispute Resolution Procedure, as the case may be, shall be the Class B Limited Unit holder's projected administrative expenses for such Fiscal Year for the purposes of **Section 5.10(a)(iii)**.

- (c) The General Partner acknowledges that each Limited Partner is relying upon **Section 5.10(a)** (as determined in accordance with **Section 5.10(b)** for the holder of Class B Limited Units) for the purpose of making the representations, warranties and covenants set out in **Sections 2.7(b)(i)** and **(c)** to the extent that such representations, warranties and covenants of the Limited Partner confirm that the Limited Partner satisfied the requirements of paragraphs **(g)** and **(h)** of the definition of the expression "Qualified Partner" in **Section 1.1**, and to the extent that a Limited Partner fails to comply with the representations, warranties and covenants set out in **Sections 2.7(b)(i)** and **(c)** by reason only of a failure on the part of the General Partner (whether acting reasonably or otherwise) to cause the Partnership to have the amount of Taxable Income contemplated by **Section 5.10(a)(i)** and to allocate amounts of Taxable Income as contemplated by **Sections 5.10(a)(ii)** and **(iii)**, such failure on the part of the Limited Partner shall be deemed not to be a breach by such Limited Partner of a representation, warranty or covenant given by such Limited Partner pursuant to this Agreement.

5.11 **Distribution and Allocation Examples**

Schedule 3 sets forth illustrative examples of the operation of the distribution and allocation provisions of this **Article 5**.

5.12 **Allocation between Net Income and Capital**

Any Distributions made in a period pursuant to **Section 3.2** and this **Article 5** shall be paid first out of Net Income for the period (to the extent not previously distributed) and any excess shall be deemed to be paid out of each Partner's respective Capital Account.

5.13 **Partnership Revenues**

The Partnership will earn the revenues it requires in each Fiscal Year primarily by entering into the LIL Assets Agreement with Opco and the leases, licences and transfers contemplated therein.

5.14 Tax Adjustment Amount

For the purpose of determining the Tax Adjustment Amount in respect of each Fiscal Year:

- (a) the General Partner shall, not later than six months prior to the beginning of each Fiscal Year, deliver to the holder of the Class B Limited Units a Notice setting out the General Partner's estimate of the Taxable Income of the Partnership that will be allocated in respect of such Fiscal Year to the holder of the Class B Limited Units;
- (b) the holder of the Class B Limited Units shall, not later than one month following receipt of the Notice provided pursuant to **Section 5.14(a)**, deliver to the General Partner a Notice setting out the holder's estimate of its Tax Adjustment Amount for such Fiscal Year, including sufficient detail thereof to permit the General Partner to undertake a detailed review thereof. The General Partner shall have a period of 30 days after receipt of such Notice to determine whether to accept the Class B Limited Unit holder's estimate of such Tax Adjustment Amount or to refer the determination for resolution as a Specified Dispute pursuant to the Dispute Resolution Procedure. The Class B Limited Unit holder's estimate of such Tax Adjustment Amount (if accepted by the General Partner without dispute) or the amount determined pursuant to the Dispute Resolution Procedure, as the case may be, shall be the Class B Limited Unit holder's Tax Adjustment Amount for such Fiscal Year;
- (c) together with the Notice provided pursuant to **Section 5.14(b)**, the holder of the Class B Limited Units shall provide the General Partner, on a yearly basis, with the amount (including sufficient detail thereof to permit the General Partner to undertake a detailed review thereof) of all deductions taken into account in the determination of income and taxable income for the purposes of the Tax Act and the *Income Tax Act* (NL) to which the holder of the Class B Limited Units is entitled for the portion of its taxation year or years that is within the Fiscal Year and which are directly related to the financing of (x) the Capital Contributions made by the holder of the Class B Limited Units and (y) the acquisition of its Partnership Interest; and
- (d) for greater certainty, the computation of the Tax Adjustment Amount, including the Tax Adjustment Amount True-Up, in respect of a Fiscal Year and the computation of any amount payable for such Fiscal Year pursuant to any other applicable agreement (the parties to which include the holder of the Class B Limited Units and the General Partner) shall be computed without duplication, and in particular, the Tax Adjustment Amount and the Tax Adjustment Amount True-Up in respect of a Fiscal Year shall not include any amount on account of a Tax which has effectively been reimbursed, recovered, paid or is payable pursuant to this or any such other applicable agreement (the parties to which include the holder of the Class B Limited Units and the General Partner).

5.15 Tax Adjustment Amount True-Up

In each Fiscal Year, the holder of the Class B Limited Units shall, not later than seven months following the end of each previous Fiscal Year, deliver to the General Partner a Notice disclosing:

- (a) the amount of the Canadian federal and NL income Taxes comprising paragraph (a) of the Tax Adjustment Amount paid and payable by such holder in respect of such previous Fiscal Year;
- (b) the amount of the other Canadian federal and NL Taxes comprising paragraph (b) of the Tax Adjustment Amount paid and payable by such holder in respect of such previous Fiscal Year;
- (c) the amount of any Canadian federal and NL Taxes refunded or otherwise credited against Taxes in such previous Fiscal Year in respect of that or any other previous Fiscal Year; and
- (d) the amount of any Canadian federal and NL Taxes assessed or reassessed in such previous Fiscal Year in respect of that or any other previous Fiscal Year, excluding, however, any Taxes assessed or reassessed after the Normal Reassessment Period applicable to such Taxes.

The amount (whether positive or negative) by which the aggregate of the amounts determined pursuant to **Sections 5.15(a), (b), (c) and (d)** differs from the aggregate of the amounts determined pursuant to paragraphs (a) and (b) of the definition of the expression "Tax Adjustment Amount" for such previous Fiscal Year shall be the Tax Adjustment Amount True-Up ("**Tax Adjustment Amount True-Up**") for the Fiscal Year following the first referenced Fiscal Year in **Section 5.15**. The General Partner shall have a period of 30 days after receipt of such Notice to determine whether to accept the Class B Limited Unit holder's determination of such Tax Adjustment Amount True-Up or to refer the determination for resolution as a Specified Dispute pursuant to the Dispute Resolution Procedure. The Class B Limited Unit holder's determination of such Tax Adjustment Amount True-Up (if accepted by the General Partner without dispute) or the amount determined pursuant to the Dispute Resolution Procedure, as the case may be, shall:

- (e) be the Class B Limited Unit holder's Tax Adjustment Amount True-Up for the Fiscal Year following the first referenced Fiscal Year in **Section 5.15**; and
- (f) be:
 - (i) if a positive amount, an entitlement of the Class B Limited Unit holder and an obligation of the Partnership; or
 - (ii) if a negative amount, an entitlement of the Partnership and an obligation of the Class B Limited Unit holder,

in either case to be collected or adjusted in accordance with the provisions of this Agreement relating to the determination, collection and distribution of the Tax Adjustment Amount.

5.16 Change in Taxation Years

Neither the Partnership nor the holder of the Class B Limited Units shall change its taxation year for the purposes of the Tax Act unless it first complies with the following procedure:

- (a) the Person seeking to change its taxation year (the “**Requesting Party**”) shall give to the other Party (the “**Requested Party**”) a Notice setting forth the following information:
 - (i) the proposed new taxation year for the Requesting Party; and
 - (ii) the specific text of all amendments (the “**Proposed Amendments**”) to this Agreement proposed by the Requesting Party for the purpose of:
 - (A) making any necessary adjustments to the method of determining and calculating the Tax Adjustment Amount and the Tax Adjustment Amount True-Up (including any necessary adjustments to the method of calculating or determining any amount required for such purpose, and the application of any provision of this Agreement relevant for such purpose); and
 - (B) ensuring that the change in the taxation year of the Requesting Party, if implemented, would not cause the Requested Party (or, if the holder of the Class B Limited Units is the Requesting Party, any other Partner) to incur any Loss;
- (b) the Requested Party shall have a period of 30 days following receipt of the Requesting Party’s Notice to determine whether to approve the Requesting Party’s proposed change in its taxation year and the Proposed Amendments or whether to refer the matter for resolution as a Specified Dispute pursuant to the Dispute Resolution Procedure (the issue for resolution being whether the Proposed Amendments would accomplish the objectives described in **Sections 5.16(a)(ii)(A)** and **(B)**). If
 - (i) the Requested Party approves the Requesting Party’s proposed change in its taxation year and the Proposed Amendments as set forth in the Requesting Party’s Notice; or
 - (ii) it is determined pursuant to the Dispute Resolution Procedure that the Proposed Amendments as set forth in the Requesting Party’s Notice will accomplish the objectives described in **Sections 5.16(a)(ii)(A)** and **(B)**,

all Partners shall enter into an agreement to implement the Proposed Amendments, and the Requesting Party shall, upon such Proposed Amendments taking effect, change its taxation year to the new taxation year set forth in the Requesting Party's Notice.

If either the Partnership or the holder of the Class B Limited Units is required, due to a change in Applicable Law or any other event beyond its control, to change its taxation year, the Parties will use commercially reasonable efforts to amend this Agreement for the purpose of accomplishing the objectives described in **Sections 5.16(a)(ii)(A) and (B)**.

ARTICLE 6 MANAGEMENT OF THE PARTNERSHIP

6.1 Authority of General Partner

Except as otherwise provided herein, the General Partner is authorized to carry on the Business, with full power and authority to administer, manage, control and operate the Business as set forth herein. Subject to the terms of this Agreement, the General Partner shall have all power and authority to do any act, take any proceeding, make any decision and execute and deliver any agreement, instrument, deed or other document necessary for or incidental to carrying out the Business of the Partnership for and on behalf of and in the name of the Partnership. No Person dealing with the Partnership will be required to inquire into the authority of the General Partner to do any act, take any proceeding, make any decision or execute and deliver any agreement, instrument, deed or other document for and on behalf of and in the name of the Partnership.

6.2 Powers of the General Partner

- (a) Except as otherwise provided herein, and without limiting the generality of **Section 6.1**, the General Partner shall have full power and authority for and on behalf of and in the name of the Partnership, and this **Section 6.2(a)** is expressly agreed to constitute "written consent" for the purpose of section 8(2) of the Act as regards the matters mentioned in such section 8(2):
- (i) to carry out any and all of the Business and to perform all acts and enter into and perform all contracts, undertakings and other obligations which it may deem necessary, advisable or incidental thereto;
 - (ii) to acquire assets and property, both real and personal, of any description;
 - (iii) to enter into subscription agreements with existing or new Limited Partners, and equity funding agreements with any Limited Partner, without any approval of the Limited Partners being required, or such action being subject to any pre-emptive right or consultation with other Limited Partners;

- (iv) to issue and re-issue Units and to allot or dispose of such Units to existing or new Limited Partners, and as to Units owned by the General Partner, to pledge, create a security interest in, or otherwise give security on, any such Units as collateral for Financing;
- (v) for certainty, without authorization from the Limited Partners but subject to the provisions of **Section 6.12(b)**:
 - (A) to borrow money upon the credit of the Partnership;
 - (B) to issue, reissue, sell or pledge debt obligations of the Partnership; and
 - (C) to mortgage, charge, pledge or otherwise create a security interest in all or any property of the Partnership, owned or later acquired, to secure a debt obligation of the Partnership;
- (vi) subject to the provisions of **Section 6.12(b)**, to incur, assume or become liable under or in respect of the Financing without limit as to the amount, cost or terms of payment thereof (including payments which may be calculated by reference to cash flow, income, revenue or like amounts) upon the credit of the Partnership and to incur and to assume and covenant to pay other indebtedness, liabilities and obligations of all kinds incurred in the ordinary course of the Business, to guarantee obligations of, co-covenant with and join in the covenants of, others, in respect of the indebtedness, liabilities or obligations of the Partnership, and to raise or secure the repayment thereof, in such manner, upon such terms and conditions, and in all respects as the General Partner thinks fit, and in particular may, without limiting the generality of the foregoing:
 - (A) draw, make, accept, endorse, execute, negotiate, issue and deliver bills of exchange, promissory notes, cheques, drafts, orders for payment or delivery of money, receipts, directions, evidences of indebtedness, other negotiable and non-negotiable instruments and bonds, debentures, debenture stock and other debt obligations either outright or as security for any indebtedness, liabilities or obligations of the Partnership or of any other Person;
 - (B) grant, create, incur or assume any security interest, mortgage, pledge, lien, charge, whether by way of specific or floating charge, or give other security on the undertaking and on the whole or any part of the property and assets of the Partnership (both present and future); and
 - (C) execute and deliver all agreements, instruments, deeds and other documents relative to the foregoing;

- (vii) subject to the provisions of **Section 6.12(b)**, to provide guarantees, indemnities and other forms of assurance to third parties in respect of the indebtedness, liabilities or obligations of the Partnership;
- (viii) to incur and pay or cause or approve the payment of all costs, outlays, disbursements and Expenditures of the Partnership in accordance with provisions and priorities established under the terms of the Financing Documents as long as any amounts are due thereunder and the credit facilities, extensions of credit and accommodations thereunder have not been cancelled and terminated;
- (ix) to employ or retain (whether as employees, consultants, contractors or otherwise) all Persons necessary or desirable for the conduct of the Business;
- (x) to retain such legal counsel, experts, financial advisors or consultants as the General Partner shall consider appropriate and to rely upon the advice of such Persons;
- (xi) to open, maintain and close on behalf of and in the name of the Partnership bank accounts and appoint signing officers from time to time and to make deposits and draw cheques and other orders for the payment of monies and to invest or cause to be invested funds of the Partnership not immediately required for the Business;
- (xii) subject to the provisions of **Section 6.12(b)**, to commence or defend or cause to be commenced or defended any legal proceeding in connection with the Partnership or its Business, property or assets and to take all action in connection therewith, including consenting to a judgment against the Partnership, and to agree to any compromise or arrangement by the Partnership with any creditor or creditors or class or classes of creditors of the Partnership;
- (xiii) to file or cause to be filed returns required by any Authorized Authority and make or cause to be made remittances and other payments and claim refunds in connection therewith;
- (xiv) to make or cause to be made any election, designation or determination that may be made under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province or jurisdiction relating to the affairs of the Partnership or its Affiliates or the interest of any Person in the Partnership on behalf of all Persons who are Partners or who are the beneficial owners of Partnership Interests during the Fiscal Year and shall have the authority to act for the Partnership in connection therewith, including to make or file an election under subsection 97(2) of the Tax Act, or any other provision of applicable tax legislation on behalf of the Partnership or any or all members thereof;

- (xv) to make all applications and submissions to Authorized Authorities and deal with all matters relating or incidental to compliance with the *Public Utilities Act* (NL), and the establishment of rates for the use of transmission capacity of the Labrador-Island Link and regulatory submissions related to the expansion of the Labrador-Island Link and in regulatory proceedings of other parties having or likely in the view of the General Partner to have an impact upon the Business;
 - (xvi) subject to the provisions of **Section 6.12(b)**, to sell, lease, exchange, transfer, license or otherwise dispose of all or any part of the property, assets or undertaking of the Partnership at such time, in such manner and on such terms as the General Partner considers appropriate;
 - (xvii) to enter into any agreement (including, subject to **Section 6.9**, with Affiliates) for the management or operation of the Business, property and assets of the Partnership or any part thereof;
 - (xviii) to acquire and maintain or cause to be acquired and maintained such insurance coverage as the General Partner may deem necessary or advisable for protection of the Partnership against claims, liabilities and losses arising from the conduct of its Business or the ownership or leasing of its property and assets and to administer all claims or proceedings covered by insurance maintained by the Partnership;
 - (xix) to employ, supervise, manage and terminate, or cause to be employed, supervised, managed and terminated, employees in the conduct of the business, affairs and undertaking of the Partnership and to incur and pay or cause to be paid all remuneration and other costs and expenses of the Partnership in connection with their employment;
 - (xx) to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all agreements, instruments, deeds and other documents to effect any and all of the foregoing;
 - (xxi) to do all other acts and things necessary, incidental or advisable in connection with or for the furtherance of the Business; and
 - (xxii) subject to the provisions of **Section 6.12(b)**, to make any amendment to this Agreement in accordance with **Section 12.2**.
- (b) The General Partner shall manage and conduct all aspects of the operations and other activities of the Partnership; provided however that unless waived by the Limited Partners by Ordinary Resolution, the General Partner shall not:
- (i) subject to the provisions of **Section 6.12(b)**, cause the Partnership to guarantee the indebtedness of any Person unless such guarantee is in connection with, or ancillary to, the Development Activities or such

guarantee is necessary or desirable in connection with the conduct of the Business, including guarantees of the obligations of a Person engaged by the Partnership in connection with designing, engineering, constructing, Commissioning or operating the Labrador-Island Link or otherwise providing goods or services to the Labrador-Island Link;

- (ii) subject to the provisions of **Section 6.12(b)**, (other than in conjunction with a *bona fide* internal reorganization of the Partnership, or with the approval by an Ordinary Resolution) sell, lease, exchange, transfer, license or otherwise dispose of all or substantially all of the property of the Partnership, other than a mortgage, pledge, charge or other encumbrance on all or any part of the property of the Partnership to secure obligations in respect of the Financing;
 - (iii) subject to the provisions of **Section 6.12(b)**, cease to carry on the Business or otherwise make any material change in the fundamental nature of the Business unless the Regulatory Approvals necessary to carry on the Business are terminated or the General Partner has determined that it is not in the best interests of the Partnership to continue to carry on the Business because the terms or conditions thereof are so materially adverse to the Partnership and to the Limited Partners as a whole; or
 - (iv) subject to the provisions of **Section 6.12(b)**, make or institute a general assignment for the benefit of creditors or institute any proceeding seeking to adjudicate the Partnership bankrupt or insolvent or seeking the liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of the Partnership or its debts under any law relating to bankruptcy, insolvency or relief of debtors or taking of any proceedings with respect to dissolution, liquidation or other winding-up; provided however that if the Board of Directors determines by resolution that it is in the best interests of the Partnership to seek protection from creditors, the General Partner may take such steps as the Board of Directors may determine to be advisable to preserve all of the rights and protections which may be available to the Partnership without prior approval of the Limited Partners.
- (c) The General Partner shall include in all contracts entered into by the Partnership a notice or other provision to the effect that the Partnership is a limited partnership (which may be satisfied by contracting in the name of the Partnership as a limited partnership).

6.3 Borrowings from Related Parties

The Limited Partnership may borrow from the General Partner, any Limited Partner or an Affiliate of any of them subject to such borrowing not being a Limited-Recourse Amount and subject to the provisions of the Financing Documents.

6.4 Title to Project Assets

The General Partner may hold Project Assets in its name as nominee for the Partnership and for the use and benefit of the Partners in accordance with the terms hereof and may from time to time execute one or more declarations of trust or beneficial ownership in favour of the Partnership in respect of all or any of such property thereby confirming that such property is held as partnership property and not as the separate property of the General Partner alone. All Project Assets must be held and applied by the Partners exclusively for the purposes of the Partnership and in accordance with this Agreement and as provided by the Act.

6.5 Exercise of Duties of the General Partner

The General Partner covenants that it shall:

- (a) exercise its powers and discharge its duties under this Agreement honestly, in good faith, and in the best interests of the Partnership;
- (b) except as required by Applicable Law, maintain the confidentiality of financial and other information and data which it may obtain through or on behalf of the Partnership, the disclosure of which may adversely affect the interests of the Partnership or a Limited Partner;
- (c) devote to the conduct of the Business the time that is reasonably required for the proper management of the Business;
- (d) purchase, at the expense of the Partnership, any liability or other insurance that the General Partner considers appropriate in the circumstances to protect the Business and the property of the Partnership; and
- (e) pay from the funds of the Partnership all costs and expenses of the Partnership.

6.6 Execution of Documents

Any and all powers of the General Partner may be exercised by the execution and delivery by the General Partner or an agent or employee of the Partnership designated by it for and on behalf of and in the name of the Partnership, and under seal or otherwise, of agreements, instruments, deeds or other documents in such forms as the General Partner or such agent or employee may deem sufficient.

6.7 Reliance by Third Parties

Third parties dealing with the Partnership are entitled to rely conclusively upon the power and authority of the General Partner as herein set forth. The power of the General Partner to represent the Partnership in dealings with third parties is unrestricted insofar as third parties are concerned.

6.8 **Delegation**

The General Partner may, subject to **Section 6.9**, contract with any other Person (including any Affiliate) to carry out any of the duties of the General Partner and may delegate to such Person any power and authority of the General Partner hereunder, but no such contract or delegation will relieve the General Partner of any of its obligations hereunder, including its obligations in connection with the control of the business, affairs and undertaking of the Partnership.

6.9 **Transactions with Affiliates**

- (a) The Partnership may, directly or indirectly, enter into contracts or undertakings with, and carry out transactions with any Affiliate, including contracts for the provision of supplies or services (including management, operating, consulting or financial services) to the Partnership, the purchase, lease, license or other acquisition of property or assets or any interest therein from, or the sale, transfer, assignment, lease, license or other disposition of property or assets or any interest therein to, any such Person, the provision of any financial accommodation to, or subject to **Section 6.3**, the borrowing from any such Person, and any other kind of contract, undertaking or transaction in connection with the business, property or assets of the Partnership, provided that except in the case of a Wholly-Owned Subsidiary of the Partnership, such contract, undertaking or transaction:
- (i) does not result in the Partnership guaranteeing or becoming liable for, directly or indirectly, any of the separate indebtedness, liabilities or obligations of any such Person;
 - (ii) is not for the purchase or acquisition of any shares or other securities of any such Person; and
 - (iii) is on terms, and at a cost or for a price or consideration to the Partnership, which are no less advantageous to the Partnership, taken as a whole, than would generally be obtainable by the Partnership from *bona fide* arm's length parties.
- (b) It is acknowledged that the entering into, and the performance of its obligations under, the LIL Assets Agreement by the Partnership is deemed to be in compliance with this **Section 6.9**.
- (c) Lending to or investment in the debt obligations of Nalcor, NLH or the Government of NL of amounts received from Opco before First Commercial Power by way of Prepaid Rent, is deemed to be in compliance with this **Section 6.9**.

6.10 **Resolution of Conflicts of Interest**

- (a) Unless otherwise expressly provided in this Agreement, whenever a potential conflict of interest exists or arises between the General Partner or any of its

Affiliates, on the one hand, and the Partnership or any Partner on the other hand, any resolution or course of action in respect of such conflict of interest shall be permitted and deemed approved by all Partners, and shall not constitute a breach of this Agreement, or of any standard of care or duty stated or implied by Applicable Law if the General Partner reasonably believes such resolution or course of action is fair and reasonable to the Partnership.

- (b) The General Partner shall in connection with its resolution of any conflict of interest consider:
 - (i) the interests of all parties involved in such conflict or affected by such action;
 - (ii) any customary or accepted industry practices; and
 - (iii) any applicable generally accepted accounting practices or principles.

6.11 Other Matters Concerning the General Partner

- (a) The General Partner may rely and will be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.
- (b) The General Partner may consult with legal counsel, accountants, appraisers, management consultants, investment bankers and other consultants and advisors of its choosing, and any act taken or omitted in reliance upon the opinion (including an opinion of counsel) of any of those Persons as to matters that the General Partner reasonably believes to be within that Person's professional or expert competence will be conclusively presumed to have been done or omitted in good faith and in accordance with that opinion.
- (c) The General Partner has the right, in respect of any of its power, authority or obligations under this Agreement, to act through any of its duly authorized officers.
- (d) Nothing contained in this Agreement, however, is intended to nor shall it be construed to require the General Partner to consider the interests of any Person other than the Partnership.
- (e) In the absence of bad faith by the General Partner, the resolutions, actions or terms so made, taken or provided by the General Partner with respect to such matter shall not constitute a breach of this Agreement or a breach of any standard of care or duty imposed herein or stated or implied under the Act or any Applicable Law, rule or regulation.

6.12 **Restrictions upon the General Partner**

- (a) The General Partner shall not:
 - (i) commingle the funds of the Partnership with the funds of the General Partner or any of its Affiliates or with the funds of any other Person; or
 - (ii) dissolve the affairs of the Partnership except in accordance with the provisions of **Article 11**.

- (b) Notwithstanding any other provision of this Agreement, to the extent that the provisions of **Sections 6.2(a)(v), 6.2(a)(vi), 6.2(a)(vii), 6.2(a)(xii), 6.2(a)(xvi), 6.2(a)(xxii), 6.2(b)(i), 6.2(b)(ii), 6.2(b)(iii), 6.2(b)(iv)** or **6.21** relate in whole or in part to any of the following activities, actions or matters, then a Special GP Resolution shall be required to be adopted in order to authorize such activity, action or matter:
 - (i) the incurrence by the Partnership of any indebtedness (including by way of guarantee) other than indebtedness to the Financing Parties pursuant to the Financing Documents and indebtedness relating to the ownership and operation of the LIL;
 - (ii) any dissolution, liquidation, consolidation or merger of the Partnership or the sale of all or substantially all of the assets of the Partnership;
 - (iii) any change to the Business to be carried on by the Partnership; or
 - (iv) making or instituting a general assignment for the benefit of creditors or instituting any proceedings seeking to adjudicate the Partnership bankrupt or insolvent or otherwise instituting any bankruptcy or insolvency proceedings whatsoever under any law relating to bankruptcy, insolvency or relief of debtors.

6.13 **Reimbursement of General Partner**

The Partnership shall reimburse the General Partner for all reasonable direct costs and expenses incurred by the General Partner in the performance of its duties under this Agreement on behalf of the Partnership, on a monthly basis.

6.14 **Annual Business Plan and Budget**

At least 45 days before the commencement of each Fiscal Year, the General Partner shall prepare and deliver to the Limited Partners an annual business plan and budget for such Fiscal Year. Such annual business plan and budget must be approved by the Board of Directors before the commencement of the Fiscal Year to which it relates and the General Partner shall notify the Limited Partners when such approval occurs. Such business plan and budget shall include a statement setting forth the principal assumptions upon which the business plan and budget is based and a summary of all proposed material capital expenditures and dispositions. The Board of

Directors may amend the annual business plan or budget from time to time during the course of any Fiscal Year and if it does so shall notify the Limited Partners.

6.15 **Removal of the General Partner**

(a) Except as provided for in this **Section 6.15**, the General Partner may not be removed as General Partner of the Partnership.

(b) Upon:

(i) the passing of any Special GP Resolution requiring or relating to the bankruptcy, dissolution, liquidation or winding-up or the making of any assignment for the benefit of creditors of the General Partner;

(ii) the appointment of a receiver of the assets and undertaking of the General Partner where such appointment is not revoked or withdrawn within 15 days of the appointment and, in any case, does not relate to the insolvency of the Partnership; or

(iii) the General Partner failing to maintain its status under **Section 2.7(a)**,

the Limited Partners shall consider the appointment of a new General Partner. The General Partner shall promptly give notice of such event to the Limited Partners. A new General Partner that is a Qualified General Partner will, in these instances, be appointed by the Limited Partners by an Ordinary Resolution within 90 days of receipt of written notice of that event (which written notice will be provided by the General Partner promptly upon the occurrence of that event) provided that the General Partner shall not cease to be the General Partner until the earlier of the appointment of a new General Partner that is a Qualified General Partner and the expiry of the 90 day period.

(c) The General Partner may also be removed:

(i) if the General Partner has committed a material breach of this Agreement, which continues for a period of 90 days after Notice is given by any Limited Partner to the General Partner of that breach; and

(ii) the removal is approved by an Ordinary Resolution.

(d) Any removal of the General Partner by the Partners under this **Section 6.15**:

(i) must also provide for the election and admission to the Partnership of a new General Partner (and this **Section 6.15(d)(i)** is expressly agreed to constitute “written consent” for the purposes of section 8(2)(e) of the Act as regards the admission of such new General Partner) that is a Qualified General Partner; and

- (ii) shall be effective immediately before the election of the successor General Partner to the Partnership.

6.16 Voluntary Resignation of a General Partner

The General Partner may resign as general partner of the Partnership, but only after the completion of the Development Activities relating to the Labrador-Island Link, on not less than 180 days' written notice to the Partners and that resignation will become effective upon the earlier of:

- (a) the appointment of a new General Partner that is a Qualified General Partner by the Partners pursuant to an Ordinary Resolution (and, for certainty, the Partners are authorized to adopt such an Ordinary Resolution); and
- (b) the last day of that 180 day period,

provided that the General Partner shall not be entitled to resign if the effect would be to dissolve the Partnership. The General Partner may withdraw its resignation at any time prior to the effective date of resignation upon written notice to the Partners.

6.17 Condition Precedent

As a condition precedent to the resignation of the General Partner, the Partnership shall pay all amounts payable by the Partnership to the General Partner pursuant to this Agreement accrued to the date of resignation or removal subject to any claims or liabilities of the General Partner to the Partnership.

6.18 Transfer to New General Partner

On the admission of a new General Partner to the Partnership on the resignation or removal of a prior General Partner, the resigning or retiring General Partner shall do all things and take all steps to transfer the administration, management, control and operation of the Business, the books, records and accounts of the Partnership and the title to the Partnership's Property to the new General Partner and shall execute and deliver all deeds, transfers, conveyances, assignments, certificates, declarations and other documents necessary or desirable to effect that transfer in a timely fashion.

6.19 Release by Partnership

On the resignation of the General Partner, the Partnership shall release and hold harmless the General Partner resigning from any costs, expenses, damages or liabilities suffered or incurred by the General Partner as a result of or arising out of events which occur in relation to the Partnership after that resignation.

6.20 New General Partner

A new General Partner shall become a party to this Agreement by signing a counterpart of this Agreement and shall agree to be bound by all of the provisions of this

Agreement and to assume the obligations, duties and liabilities of the General Partner under this Agreement as from the date the new General Partner becomes a party to this Agreement.

6.21 Transfer of General Partner Interest

Except as permitted by **Section 6.18** or in connection with the Financing, the General Partner may not, without the prior written approval of an Ordinary Resolution and subject to the provisions of **Section 6.12(b)**, transfer its General Partner interest in the Partnership, which transfer must in any event only be made to a Person that is a Qualified General Partner.

ARTICLE 7 FINANCIAL INFORMATION

7.1 Books and Records

The General Partner shall keep or cause to be kept at the principal office of the Partnership appropriate books and records with respect to the Business including the Register. Any books and records maintained by or on behalf of the Partnership in the regular course of its Business, including books of account and records of Partnership proceedings, may be kept on, or be in the form of, computer disks, hard disks, magnetic tape or any other information storage device, provided that the books and records so maintained are convertible into clearly legible written form within a reasonable period of time. The books of the Partnership shall be maintained, for financial reporting purposes, on an accrual basis in accordance with Canadian GAAP.

7.2 Reports

The General Partner shall provide the Partners with audited annual and unaudited quarterly financial statements of the Partnership and shall provide such other information as may be requested by the Partners necessary for the preparation of their respective annual and quarterly financial statements.

7.3 Right to Inspect Partnership Books and Records

In addition to other rights provided by this Agreement or by Applicable Law, and except as limited by this Section, each Partner has the right, for a purpose reasonably related to that Partner's own interest as a Partner in the Partnership, upon reasonable Notice and at that Partner's own expense, to receive:

- (a) a current list of the name and last known address of each Partner;
- (b) copies of this Agreement, the Certificate, the Register and amendments to those documents;
- (c) copies of minutes of meetings and written resolutions of the Partners; and
- (d) any other information regarding the affairs of the Partnership.

7.4 Income Tax Information

The General Partner shall send or cause to be sent to each Person which was a Partner or a Retired Limited Partner:

- (a) at the end of a Fiscal Year;
- (b) which received a Distribution or a Retirement Distribution in a Fiscal Year;
- (c) which was allocated Taxable Income or any Tax Loss in a Fiscal Year; or
- (d) which was a Partner at the date of dissolution of the Partnership,

by the 60th day following the end of the Fiscal Year or within 60 days of dissolution, as the case may be, or within any other shorter period as may be required by Applicable Law, all information, in suitable form, relating to the Partnership necessary for a Partner to prepare that Partner's Canadian federal and provincial income tax returns. The General Partner shall file, on behalf of itself and the Partners, annual Partnership information returns and any other information returns required to be filed under the Tax Act and any other applicable tax legislation in respect of the Partnership.

7.5 Accounting Policies

The General Partner is authorized to establish accounting policies from time to time with respect to the financial statements of the Partnership and to change any policy that has been so established from time to time, so long as those policies are consistent with the provisions of this Agreement and, if this Agreement does not deal with a matter of accounting, with Canadian GAAP.

7.6 Appointment of Auditor

The General Partner shall, on behalf of the Partnership, select the Auditor to audit and report to the Partners upon the financial statements of the Partnership for, and as at the end of, each Fiscal Year.

7.7 Information and Assistance

Each Partner shall provide and shall cause its Affiliates, contractors and subcontractors to provide the General Partner and Auditor with:

- (a) all reasonably requested information and documentation and access thereto on a timely basis; and
- (b) all reasonable assistance in the exercise by the General Partner and the Auditor of its rights of access, inspection and audit hereunder, including all reasonable access to their directors, officers, agents, servants, supervisors, employees, contractors, suppliers, insurers, sureties, engineers and consultants and shall use commercially reasonable efforts to cause such Persons to fully and accurately answer questions and comply with all requests of the General Partner and the Auditor.

ARTICLE 8
MEETINGS OF THE PARTNERS

8.1 **Requisitions of Meetings**

The General Partner may call a general meeting of Partners at any time and place as it deems appropriate in its sole and absolute discretion for the purpose of considering any matter set out in the notice of meeting. In addition, where Partners holding not less than 20% of the outstanding aggregate balances of the Class A Limited Unit Capital Account and the Class B Limited Unit Capital Account (each, a “**Requisitioning Partner**”) give Notice signed by each of them to the General Partner, requesting a meeting of the Partners, the General Partner shall, subject to **Section 8.3**, within 60 days of receipt of that Notice, convene a meeting, and if it fails to do so, any Requisitioning Partner may convene a meeting by giving notice in accordance with this Agreement. Every meeting of Partners, however convened, will be conducted in accordance with this Agreement.

8.2 **Place of Meeting**

Every meeting of Partners will be held in the Province of NL or at any other place in Canada as the General Partner (or Requisitioning Partners, if the General Partner fails to call the meeting in accordance with **Section 8.1**) may designate.

8.3 **Notice of Meeting**

Notice of any meeting of Partners will be given to each Partner not less than 21 days (but not more than 60 days) prior to the meeting, and shall state:

- (a) the time, date and place of the meeting; and
- (b) in general terms, the nature of the business to be transacted at the meeting in sufficient detail to permit a Partner to make a reasoned decision on that business.

Notice of an adjourned meeting of Partners need not be given if the adjourned meeting is held within 14 days of the original meeting. Otherwise, but subject to **Section 8.11**, notice of adjourned meetings shall be given not less than 10 days in advance of the adjourned meeting and otherwise in accordance with this **Section 8.3**, except that the notice need not specify the nature of the business to be transacted if unchanged from the original meeting.

8.4 **Record Dates**

For the purpose of determining the Partners who are entitled to vote or act at any meeting of Partners or any adjournment of a meeting, or for the purpose of any other action, the General Partner may from time to time cause the transfer books to be closed for a period, not exceeding 30 days, as the General Partner may determine or, without causing the transfer books to be closed, the General Partner may fix a date not more than 60 days prior to the date of any meeting of Partners or other action as a record date for the determination of Partners entitled to vote at that meeting or any adjournment of the meeting or to be treated as Partners of record for

purposes of any other action, and any Partner who was a Partner at the time so fixed will be entitled to vote at the meeting or any adjournment of the meeting even though that Partner has since that date disposed of the Partner's Units, and no Partner becoming a Partner after that fixed date will be a Partner of record for purposes of that action. A Person will be a Partner of record at the relevant time if the Person's name appears in the Register, as amended and supplemented, at that time.

8.5 Proxies; Representatives

- (a) A Partner which is a corporation may appoint an officer, director or other authorized natural Person as its representative to attend, vote and act on its behalf at a meeting of Partners.
- (b) Any Partner entitled to vote at a meeting of Partners may vote by proxy if a form of proxy has been received by the General Partner or the chair of the meeting for verification prior to the time fixed by the General Partner, which time will not exceed two Business Days preceding the meeting or any adjournment of the meeting.

8.6 Validity of Proxies

A proxy purporting to be executed by or on behalf of a Partner will be considered to be valid unless challenged at the time of or prior to its exercise. The Person challenging the proxy will have the burden of proving to the satisfaction of the chair of the meeting that the proxy is invalid and any decision of the chair concerning the validity of a proxy will be final. Proxies will be valid only at the meeting with respect to which they were solicited, or any adjournment of the meeting, but in any event will cease to be valid one year from their date. A proxy holder must be a natural Person but need not be a holder of a Unit. A proxy given by a corporation need not bear the corporate seal, if any.

8.7 Form of Proxy

An instrument of proxy, whether for a specified meeting of Partners or otherwise, shall as nearly as circumstances permit be in the following form:

"[*abc inc*], of _____, in the Province of _____, being a Limited Partner of Labrador-Island Link Limited Partnership (the "Partnership"), hereby appoints [*name*] of [*locality*] in the Province of _____, as its proxy with full power of substitution to attend and vote for it and on its behalf at the meeting of the Partnership to be held on the [] day of [], 20[] and any adjournment thereof.

Dated:

In witness whereof

[*name of Partner*]

By

Authorized signature"

8.8 Revocation of Proxy

A vote cast in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous insolvency or bankruptcy of the Partner giving the proxy or the revocation of the proxy unless written notice of that insolvency, bankruptcy or revocation has been received by the chair of the meeting prior to the commencement of the meeting.

8.9 Attendance of Others

Any officer or director of the General Partner will be entitled to attend any meeting of Partners. The General Partner has the right to authorize the presence of any Person at a meeting regardless of whether the Person is a Partner. With the approval of the General Partner that Person is entitled to address the meeting.

8.10 Chair

The General Partner may nominate a Person, including an officer or director of the General Partner, to be chair of a meeting of Partners and the Person nominated by the General Partner will be chair of that meeting unless the Partners elect another chair by Ordinary Resolution.

8.11 Quorum

A quorum at any meeting of Partners will consist of two or more Partners present in person or by proxy at least one of whom must be the holder of a Class A Limited Unit and one of whom must be the holder of a Class B Limited Unit. If, within half an hour after the time fixed for the holding of the meeting, a quorum for the meeting is not present, the meeting:

- (a) if called by or on the requisition of Partners, will be terminated; and
- (b) if called by the General Partner, will be held at the same time and place on the day which is 14 days later (or if that date is not a Business Day, the Business Day prior to that date). The General Partner shall give three days' notice to Partners of the date of the reconvening of the adjourned meeting and at the reconvened meeting the quorum will consist of the Partners then present in person or represented by proxy.

8.12 Voting Procedure

- (a) Every question submitted to a meeting of Partners will be decided by a poll and, in the case of an equality of votes, the chair will not have a casting vote and the resolution will be taken to be defeated. The chair will be entitled to vote in respect of any Units for which the chair may be a proxyholder. On any vote at a meeting of Partners, a declaration of the chair concerning the result of the vote will be conclusive.
- (b) On a poll, the proxy for each Partner present at the meeting will have one vote for each Unit in respect of which the Partner is shown on the Register as owner at the record date.

- (c) The General Partner, as general partner, shall be entitled to one vote on any poll at any meeting of Partners.

8.13 **Poll**

A poll required will be taken at the meeting of Partners or at an adjournment of the meeting in such manner as the chair directs.

8.14 **Powers of Limited Partners; Resolutions Binding**

The Limited Partners will have only the powers expressly set out in this Agreement and any additional powers expressly provided by Applicable Law. Subject to the foregoing sentence, any resolution passed in accordance with this Agreement will be binding on each Partner and that Partner's respective successors and assigns, whether or not that Partner was present in Person or voted against any resolution so passed.

8.15 **Minutes**

The General Partner shall cause minutes to be kept of all proceedings and resolutions at every meeting and shall cause all minutes and all resolutions of the Partners consented to in writing to be made and entered in books to be kept for that purpose. Any minutes of a meeting signed by the chair of the meeting will be deemed evidence of the matters stated in them and the meeting will be deemed to have been duly convened and held and all resolutions and proceedings shown in them will be deemed to have been duly passed and taken.

8.16 **Additional Rules and Procedures**

To the extent that the rules and procedures for the conduct of a meeting of the Partners are not prescribed in this Agreement, the rules and procedures will be determined by the General Partner.

ARTICLE 9
DEFAULT BY LIMITED PARTNER

9.1 **Limited Partner Default**

The occurrence of one or more of the following events shall constitute a default by a Limited Partner under this Agreement (a "**Limited Partner Default**"):

- (a) a Limited Partner fails to pay or advance any amount to be paid or advanced by it 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 from the General Partner of a demand that such amount is due and owing;
- (b) a Limited Partner is in default or in breach of any term, condition or obligation under:
 - (i) this Agreement, other than those described in **Section 9.1(a)**; or

- (ii) a subscription agreement; and

if the default or breach is capable of being cured, it continues for 30 days after the receipt by the Limited Partner of Notice thereof from the General Partner, unless the cure reasonably requires a longer period and the Limited Partner is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by the General Partner;

- (c) any representation or warranty made by a Limited Partner in this Agreement or a subscription agreement is false or misleading in any material respect;
- (d) any Insolvency Event occurs with respect to a Limited Partner or its ultimate parent; or
- (e) a Limited Partner or its ultimate parent 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.

9.2 Partnership Remedies upon Limited Partner Default

- (a) General - Upon the occurrence of a Limited Partner Default and at any time thereafter, provided the Partnership 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) the Partnership shall be entitled to exercise all or any of its rights, remedies or recourses available to it under this Agreement or otherwise available at law or in equity; and
 - (ii) the rights, remedies and recourses available to the Partnership 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 recourses or in any way limit such rights, remedies or recourses.

- (b) Disputed Amounts - If the amount or due date of any payment is disputed, the Party liable to pay shall make the payment in full on the due date set by the General Partner and the Dispute shall be resolved in accordance with the Dispute Resolution Procedure.
- (c) Losses - The Partnership may recover all Losses by the Partnership that are due to a Limited Partner 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 the Partnership to recover any amounts owed to the Partnership by such Limited Partner under this Agreement.

- (d) Guarantees - Upon the occurrence of a Limited Partner Default, the Partnership may exercise and enforce any and all rights and remedies under any guarantee of performance or financial assurances held by the Partnership in respect of the obligations of such Limited Partner.

ARTICLE 10
EXCULPATION AND INDEMNIFICATION

10.1 **Limitation of Liability**

The General Partner is not personally liable for the return of any Capital Contribution made by a Limited Partner to the Partnership. Moreover, notwithstanding anything else contained in this Agreement, but subject to **Section 2.12**, neither the General Partner nor Nalcor (except pursuant to any guarantee given by Nalcor in respect to the obligations of the General Partner or a Limited Partner) nor their respective officers, directors, shareholders, employees or agents are liable, responsible for or accountable in damages or otherwise to the Partnership or a Limited Partner or a Retired Limited Partner for an action taken or failure to act on behalf of the Partnership within the scope of the authority conferred on it by this Agreement or by Applicable Law unless the act or omission was performed or omitted fraudulently or in bad faith or constituted wilful or reckless disregard of its obligations under this Agreement.

10.2 **Indemnity of General Partner**

- (a) To the fullest extent permitted by Applicable Law but subject to the limitations expressly provided in this Agreement, the Partnership shall indemnify and hold harmless the General Partner, a Departing Partner, any Person who is or was an officer, director, employee, partner, agent or trustee of the General Partner, or any Departing Partner, or any Person who is or was serving at the request of the General Partner, or any Departing Partner as a director, officer, employee, partner, agent or trustee of another Person (collectively, an “**Indemnified Party**”) from and against any and all Losses arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnified Party may be involved, or is threatened to be involved, as a party or otherwise, by reason of the Indemnified Party’s status as:
- (i) the General Partner or a Departing Partner;
 - (ii) an officer, director, employee, partner, agent or trustee of the General Partner or a Departing Partner; or
 - (iii) a Person serving at the request of the General Partner or a Departing Partner as a director, officer, employee, agent or trustee of another Person,
- provided that
- (iv) in each case the Indemnified Party acted honestly and in good faith with a view to the best interests of the Partnership;

- (v) in the case of a criminal or administrative action or proceeding that is enforced by monetary penalty, the Indemnified Party had reasonable grounds for believing its conduct was lawful; and
- (vi) no indemnification pursuant to this **Section 10.2** will be available to an Indemnified Party where the Indemnified Party has been adjudged by a final decision of a court of competent jurisdiction in NL that is no longer appealable or a final decision pursuant to the Dispute Resolution Procedure to have been in breach of its obligations under this Agreement or to have breached obligations under Applicable Law. The termination of any action, suit or proceeding by judgment, order, settlement or conviction will not create a presumption that the Indemnified Party acted in a manner contrary to that specified above.

Any indemnification pursuant to this **Section 10.2(a)** will be made only out of the assets of the Partnership.

- (b) To the fullest extent permitted by Applicable Law, expenses (including legal fees and expenses) incurred by an Indemnified Party in defending any claim, demand, action, suit or proceeding will, from time to time, be advanced by the Partnership prior to the final disposition of any claim, demand, action, suit or proceeding upon receipt by the Partnership of an undertaking by or on behalf of the Indemnified Party to repay that amount if it is determined that the Indemnified Party is not entitled to be indemnified as authorized in this **Section 10.2**.
- (c) The indemnification provided by this **Section 10.2** will be in addition to any other rights to which an Indemnified Party may be entitled under any agreement, pursuant to any vote of the Partners, as a matter of Applicable Law or otherwise, as to actions in the Indemnified Party's capacity as:
 - (i) the General Partner or a Departing Partner;
 - (ii) an officer, director, employee, partner, agent or trustee of the General Partner or a Departing Partner; or
 - (iii) a Person serving at the request of the General Partner or a Departing Partner as a director, officer, employee, agent or trustee of another Person,and will continue as to an Indemnified Party who has ceased to serve in that capacity and as to action in any other capacity.
- (d) The Partnership may purchase and maintain (or reimburse the General Partner or its Affiliates for the cost of) insurance, on behalf of those Persons (other than the General Partner itself) as the General Partner determines, against any liability that may be asserted against or expense that may be incurred by that Person in connection with the Partnership's activities, whether or not the Partnership would

have the power to indemnify those Persons against those liabilities under the provisions of this Agreement.

10.3 Liability of Indemnified Parties

Notwithstanding anything to the contrary set forth in this Agreement, no Indemnified Party shall be liable for monetary damages to the Partnership or the Partners or their respective successors and assigns for losses sustained or liabilities incurred as a result of any error of judgment or any act or omission if such Indemnified Party acted in good faith and in a manner which the Indemnified Party reasonably believed to be in, or not opposed to, the best interests of the Partnership.

10.4 Reimbursement

If an Indemnified Party becomes involved in any capacity in any action, proceeding or investigation in connection with any matter arising out of or in connection with the Partnership's Business or affairs (including a breach of this Agreement by any Limited Partner), the Partnership shall periodically reimburse the Indemnified Party for its legal and other expenses (including the cost of any investigation and preparation) incurred in connection therewith except to the extent that any such loss, claim, damage or liability results from a breach of this Agreement or the intentional misconduct, gross negligence or fraudulent conduct of such Indemnified Party, provided that such Indemnified Party has furnished to the Partnership a written undertaking confirming that such Indemnified Party shall promptly repay to the Partnership the amount of any such reimbursed expenses paid to it if it shall ultimately be determined that such Indemnified Party is not entitled to be indemnified by the Partnership in connection with such action, proceeding or investigation because such loss, claim, damage or liability results from a breach of this Agreement, the intentional misconduct, gross negligence or fraudulent conduct of such Indemnified Party or such Indemnified Party is not entitled to indemnification pursuant to **Section 10.2**.

10.5 Indemnity by Limited Partners

Each Limited Partner shall indemnify the Partnership, the General Partner and each other Limited Partner for any loss, claim, damage or liability it or they may incur (in this **Section 10.5**, the "Claim" and in **Section 10.6** as it applies to this **Section 10.5**, the "Indemnified Tax") as a result of a breach of a representation, warranty or covenant set out in this Agreement by such Limited Partner, including a representation, warranty or covenant relating to the manner in which such Limited Partner financed its acquisition of Units or Capital Contributions. **Sections 10.6(e)** to **10.6(h)** shall apply, *mutatis mutandis*, in respect of any Claim addressed under this **Section 10.5**.

10.6 Tax Indemnity

If at any time a Partner (the "Tax Indemnifying Partner"):

- (a) is a non-resident of Canada within the meaning of the Tax Act; or

- (b) breaches any representation, warranty or covenant of such Tax Indemnifying Partner pursuant to this Agreement, or takes any other action, or fails to take an action reasonably available to it,

which being a non-resident, breach, action or failure to take an action causes the Partnership or any other Partner to be subject to:

- (c) an amount of Tax (other than Taxes under Part I of the Tax Act and similar provincial income Tax legislation, but including the Tax on specified investment flow through (SIFT) partnerships under Part IX.1 of the Tax Act); or
- (d) a withholding on account of Tax,

to which the Partnership or other Partner (as the case may be) would not have been subject but for such being a non-resident, breach, action or failure to act of the Tax Indemnifying Partner (any such amount of Tax or withholding on account of Tax being referred to in this **Section 10.6** as an “**Indemnified Tax**”), then

- (e) the General Partner shall, promptly upon becoming aware (whether by way of an assessment or threatened assessment by an Authorized Authority or otherwise) that the Partnership or a Partner has or will become subject to an Indemnified Tax, give Notice thereof to all Partners, together with such other information and documentation as the Tax Indemnifying Partner may reasonably require for the purpose of evaluating the merits of:
 - (i) objecting to, appealing or otherwise opposing any assessment or threatened assessment of Indemnified Tax; or
 - (ii) pursuing any potentially available refunds, rebates or abatements of such Indemnified Tax, or of any related penalties and interest;
- (f) the Tax Indemnifying Partner shall indemnify and save harmless the Partnership and all other Partners in respect of such amount (the “**Indemnified Amount**”) as is equal to the aggregate of the Indemnified Tax, any penalties and interest assessed with reference to such Indemnified Tax, and any loss, damages and reasonable related costs incurred by the Partnership and such Partners, and shall pay to the Partnership or other Partners, as the case may be, any such amount owing on the date (the “**Tax Payment Date**”) that is the later of:
 - (i) two Business Days prior to the date on which the relevant Indemnified Tax is due; and
 - (ii) 10 Business Days after such Notice was given by the General Partner to the Partners.

For the avoidance of doubt, any such payment by the Tax Indemnifying Partner shall not be treated or considered as a Capital Contribution for the purpose of this Agreement. If the

Tax Indemnifying Partner has failed to pay the Indemnified Amount in full to the Partnership or other Partners, as the case may be, on or prior to the Tax Payment Date:

- (iii) the amount still owing shall bear interest from and following the Tax Payment Date until the date actually paid to the Partnership or other Partners, as the case may be, at a rate equal to the Prime Rate plus three percent per annum, compounded on a monthly basis;
 - (iv) the Partnership, on its own behalf or on behalf of the other Partners, as the case may be, shall be entitled to collect and set-off such sum, together with any additional Tax, penalty, interest, loss, damages and reasonable related costs incurred by the Partnership and such Partners for which it or the other Partners are liable by virtue of the late payment or remittance of the Indemnified Amount by the Tax Indemnifying Partner; and
 - (v) the Partnership, on its own behalf or on behalf of the other Partners, as the case may be, may exercise any and all other rights and remedies to collect such sums from such Tax Indemnifying Partner available to the Partnership or the General Partner under this Agreement;
- (g) the General Partner and, to the extent determined by the Tax Indemnifying Partner (acting reasonably) to be necessary or desirable, any other Partner, shall, if so requested by the Tax Indemnifying Partner, cooperate with the Tax Indemnifying Partner for the purpose of:
- (i) objecting to, appealing or otherwise opposing (whether in the name of the Tax Indemnifying Partner, the Partnership, the General Partner or any other Partner) any assessment or threatened assessment of such Indemnified Tax; and/or
 - (ii) pursuing, on a timely basis (and whether in the name of the Tax Indemnifying Partner, the Partnership, the General Partner or any other Partner), any available refunds, rebates or abatements of such Indemnified Tax, penalties and/or interest,
- all at the cost of the Tax Indemnifying Partner; and
- (h) to the extent that any action taken pursuant to either or both of **Sections 10.6(g)(i) and 10.6(g)(ii)** results in a reduction or refund of any Indemnified Tax or of any penalty or interest assessed with respect to any Indemnified Tax, the amount of the reduction or refund shall correspondingly reduce the obligation of the Tax Indemnifying Partner pursuant to **Section 10.6(f)**, and (for greater certainty) to the extent that any amount paid by the Tax Indemnifying Partner pursuant to **Section 10.6(f)** prior to such reduction or refund exceeds the amount determined pursuant to **Section 10.6(f)** after taking into account such reduction or refund, such excess shall be promptly refunded to the Tax Indemnifying Partner.

ARTICLE 11
TERM, DISSOLUTION AND LIQUIDATION

11.1 **Term**

The term (“**Term**”) for which the Partnership is to exist will commence on the issuance of the Certificate under the Act and will end on December 31, 2081, unless otherwise agreed to in writing by each of the Partners.

11.2 **Dissolution**

The Partnership shall only be dissolved upon the unanimous written consent of the Partners and adoption of a Special GP Resolution approving the dissolution of the Partnership.

11.3 **No Dissolution**

The Partnership will continue and not come to an end:

- (a) by reason of the dissolution or insolvency of any Partner;
- (b) by reason of the retirement of any Partner;
- (c) upon any transfer of Units or any other interest in the Partnership;
- (d) upon any change to the governing law of this Agreement from the law of NL, or a change in the jurisdiction under which the Partnership is organized;
- (e) upon the changing of the Partnership from a limited partnership to a general partnership or from a general partnership to a limited partnership; or
- (f) upon an amendment to the terms of this Agreement, whether pursuant to **Article 12** or otherwise.

11.4 **Procedure on Dissolution**

Upon the dissolution under **Section 11.2**, the General Partner shall act as a receiver and liquidator of the assets of the Partnership and shall:

- (a) sell or otherwise dispose of that part of the Partnership's assets as the receiver considers appropriate;
- (b) pay or provide for the payment of the debts and liabilities of the Partnership and liquidation expenses;
- (c) distribute the remaining assets of the Partnership, if any:
 - (i) as to \$100.00, to the General Partner; and

- (ii) as to the balance, to the Limited Partners of record on the date of dissolution, as provided in **Section 3.2(d)** and to Retired Limited Partners;
- (d) for certainty, as part of the process of dissolution, distribute:
 - (i) only cash to the holder of the Class B Limited Units, the holder of the Class C Limited Units and to a Retired Limited Partner; and
 - (ii) all property of the Partnership in kind (and any remaining cash) to the holder of the Class A Limited Units; and
- (e) file the declaration of dissolution prescribed by the Act and satisfy all applicable formalities in those circumstances as may be prescribed by the laws of other jurisdictions where the Partnership is registered. In addition, the General Partner shall give prior notice of any dissolution of the Partnership by mailing to each Partner a notice at least 21 days prior to the filing of the notice of dissolution prescribed by the Act.

11.5 Disproportionate Distributions

In connection with any distribution under **Section 11.4(c)**, cash and non-cash assets may be distributed on a basis which is not proportional on a class of asset basis but which is proportional having regard to the value of the total assets distributed to each Partner, as determined by the Board of Directors.

11.6 Dissolution

The Partnership will be dissolved upon the completion of all matters set out in **Section 11.4**.

11.7 No Right to Dissolve

Except as provided for in **Section 11.2**, no Partner has the right to ask for the dissolution of the Partnership, for the winding-up of its affairs or for the distribution of its assets.

11.8 Agreement Continues

Notwithstanding the dissolution of the Partnership, this Agreement will not terminate until the provisions of **Section 11.4** have been satisfied.

ARTICLE 12 AMENDMENT

12.1 Power to Amend

Subject to **Section 12.2**, this Agreement may be amended only in writing and only with the consent of the Partners given by Ordinary Resolution and a Special GP Resolution, provided that:

- (a) this **Section 12.1** may not be amended without the unanimous written consent of the Partners and if the proposed change would adversely affect the position of a Retired Partner, the consent of the Retired Partner and a Special GP Resolution;
- (b) no amendment will be made to this Agreement which would have the effect of:
 - (i) altering the ability of the Partners to remove the General Partner without the consent of the General Partner (other than an amendment to give effect to the removal of the General Partner in accordance with **Section 6.15**);
 - (ii) altering any provision of this Agreement that affects:
 - (A) the determination of Distributable Cash for any period;
 - (B) the timing of Distributions;
 - (C) the share of Distributable Cash allocable to any class of the Partners;
or
 - (D) the Retirement Payments allocable to any Retired Limited Partner;
 - (iii) allowing any Limited Partner as such to exercise control over or management of the Business of the Partnership;
 - (iv) changing the Partnership from a limited partnership to a general partnership;
 - (v) changing the right of a Partner to vote at any meeting;
 - (vi) changing the liability of any Partner;
 - (vii) reducing the time provided to a Limited Partner to pay a cash call;
 - (viii) diminishing the entitlement of the holder of Class B Limited Units to share in:
 - (A) Distributions in accordance with **Section 3.2(b)(ii)**; or
 - (B) distributions on dissolution of the Partnership in accordance with **Section 3.2(d)**; or
 - (ix) permitting the redemption of a Limited Partner's Partnership interest, otherwise than in accordance with **Section 3.12**,
without the unanimous written consent of the Partners and a Special GP Resolution;
- (c) no amendment will be made to **Section 3.4(c)**, **5.6(b)(ii)**, **11.2** or **11.7** without the unanimous written consent of the Partners and a Special GP Resolution; and

- (d) no amendment will be made to this Agreement which would have the effect of:
- (i) adversely affecting the rights and obligations of the General Partner (other than an amendment to give effect to the removal of the General Partner in accordance with **Section 6.15** or an amendment to effect a dissolution of the Partnership in accordance with an Ordinary Resolution passed under **Section 11.2**); or
 - (ii) modifying the amounts distributable, reimbursable or otherwise payable by the Partnership to the General Partner or any of its Affiliates,
- without the consent of the General Partner and a Special GP Resolution.

12.2 Amendment by General Partner

Each Partner agrees that the General Partner (pursuant to its powers of attorney from the Limited Partners or as expressly provided in this Agreement), without the approval of any Partner, may amend any provision of this Agreement, and execute, swear to, acknowledge, deliver, file and record whatever documents may be required in connection with that amendment, to reflect:

- (a) a change in the name of the Partnership or the location of the principal place of business or the registered office of the Partnership;
- (b) admission, substitution, withdrawal or removal of Partners in accordance with this Agreement;
- (c) a change that, as determined by the General Partner, is reasonable and necessary or appropriate to qualify or continue the qualification of the Partnership as a limited partnership in which the Limited Partners have limited liability under the applicable laws;
- (d) a change that, as determined by the General Partner, is reasonable and necessary or appropriate to enable Partners to take advantage of, or not be detrimentally affected by, changes in the Tax Act or other taxation laws;
- (e) a change to amend or add any provision, or to cure any ambiguity or to correct or supplement any provisions contained in this Agreement which may be defective or inconsistent with any other provision contained in this Agreement;
- (f) a change that does not adversely affect the Partners; and
- (g) subject to **Section 12.1(b)(ii)**, adjustments to the Distribution mechanics that may be required consequent upon a transfer of the whole or part of a Partnership Interest or upon the admission of a new Limited Partner by subscription.

12.3 **Notice of Amendments**

The General Partner shall notify the Partners in writing of the full details of any amendment to this Agreement within 30 days of the effective date of the amendment.

ARTICLE 13
CONFIDENTIALITY

13.1 **Incorporation of Project NDA**

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

13.2 **Disclosure of Agreement**

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

ARTICLE 14
TRANSFER, ASSIGNMENT AND CHANGE OF CONTROL

14.1 **Dealing with Partnership Interests**

Each of the Partners covenants that until First Commercial Power occurs, it shall not Transfer, directly or indirectly, the whole or any part of its Partnership Interest now or hereafter beneficially owned by such Partner except at any time in connection with the Financing, by means of a mortgage, hypothec, charge, pledge, encumbrance or grant of a security interest in favour of the Financing Parties in connection with the Financing; after First Commercial Power, the whole or any part of a Partner's Partnership Interest shall be transferable to any Person in accordance with this Agreement, provided however that at all times the transferee shall be a Person who can make the representations set forth in **Section 2.7(b)**.

14.2 **Amendment of Certificate or Register**

The General Partner, on behalf of the Partnership, shall from time to time promptly effect filings, recordings, registrations and amendments to the Register and the Certificate and to any other documents and at any places as in the opinion of counsel to the Partnership are necessary or advisable to reflect changes in the membership of the Partnership, transfers of Partnership Interests and dissolution of the Partnership as provided in this Agreement and to constitute a transferee as a Partner.

14.3 **Non-Recognition of Trusts or Beneficial Interests**

Except as provided in this Agreement, as required by Applicable Law or as recognized by the General Partner in its sole and absolute discretion, no Person will be recognized

by the Partnership or any Partner as holding any Partnership Interest in trust, or on behalf of another Person with the beneficial interest in that other Person, and the Partnership and Partners shall not be bound or compelled in any way to recognize (even when having actual notice) any equitable, contingent, future or partial interest in any Partnership Interest or in any fractional part of a Partnership Interest or any other rights in respect of any Partnership Interest except an absolute right to the entirety of the Partnership Interest in the Partner shown on the Certificate or the Register as holder of that Partnership Interest.

14.4 Dissolution, Insolvency or Bankruptcy

Where a Person becomes entitled to a Partnership Interest on the dissolution, insolvency or bankruptcy of a Partner or otherwise by operation of law, that entitlement will not be recognized or entered into the Certificate or the Register until that Person:

- (a) has produced evidence satisfactory to the General Partner of that Person's entitlement and that it is a Qualified Partner;
- (b) has agreed in writing to be bound by the terms of this Agreement and to assume the obligations of a Partner under this Agreement; and
- (c) has delivered such other evidence, approvals and consents in respect of such entitlement as the General Partner may reasonably require and as may be required by Applicable Law or by this Agreement.

14.5 No Transfer upon Dissolution

Subject to **Section 14.4**, no Transfer of a Partnership Interest may be made or will be accepted or entered into the Certificate or the Register after the occurrence, as regards the Partnership, of an Insolvency Event, or of any of the events set out in **Section 11.2**.

14.6 Continuing Liability of Partners

Notwithstanding a Transfer of a Partnership Interest pursuant to **Section 14.1**, a disposing Partner (and any guarantor of a disposing Partner) shall *vis-à-vis* the other Partners remain liable as principal debtor under all covenants of such disposing Partner (and such guarantor) contained in this Agreement or under such guarantee.

14.7 Documents on Transfer

Where a Transfer is permitted, the transferor must furnish to the General Partner such documents, certificates, assurances and other instruments as the General Partner may require to effect the transfer.

14.8 Restriction on Transfer where Partner Indebted

Notwithstanding **Section 14.1**, except as otherwise provided in this Agreement, no Partner may voluntarily Transfer any part of its Partnership Interest if that Partner is in default in

payment of any amounts required to be paid by that Partner pursuant to any provision of this Agreement or is otherwise in default in accordance with this Agreement.

14.9 **Restriction on Transfer**

Notwithstanding **Section 14.1**, no Partner may voluntarily transfer any part of its Partnership Interest to a Person that is not a Qualified Partner and any such transfer or purported Transfer shall be void *ab initio*.

14.10 **Restriction on Transfer of other Partnership Securities**

No securities issued by the Partnership other than non-convertible debt securities shall be Transferred without the approval of the General Partner expressed in a resolution of the Board of Directors.

14.11 **Requirements for Transfer**

(a) No Limited Partner may Transfer a Unit or any part of a Partnership Interest to another Person and no Person shall be recorded on the Register as the holder of a Unit nor have a Capital Account established by the General Partner nor, if such Person is not a Limited Partner, be entitled to become a Limited Partner, unless such Person:

- (i) has signed a declaration in form acceptable to the General Partner providing the representations, warranties and covenants contained in **Section 2.7**;
- (ii) has delivered to the General Partner an executed Transfer Form, completed and executed in a manner acceptable to the General Partner;
- (iii) has agreed in writing to be bound by the terms of this Agreement and to assume the obligations of a Limited Partner under this Agreement in form satisfactory to the General Partner; and
- (iv) delivers or causes to be delivered to the General Partner the Unit Certificate representing the Units to be assigned,

and no such Person shall become a Limited Partner until all filings and recordings required by Applicable Law have been duly made.

(b) Where the assignee complies with the requirements of this Agreement and is entitled to become a Limited Partner pursuant to the provisions hereof (such assignee being sometimes referred to as a “**Substitute Limited Partner**”), the General Partner shall be authorized to admit the Substitute Limited Partner to the Partnership as a Limited Partner and the Limited Partners hereby consent to the admission of, and shall admit, the assignee to the Partnership as a Limited Partner, without further act of the Limited Partners (other than filing any document, if required, by any Authorized Authority).

- (c) The General Partner shall record the assignment in the Register and make such filings and cause to be made such recordings as are required by Applicable Law and the provisions hereof.

14.12 Substitute Limited Partner

If a Limited Partner Transfers all of the Partnership Interest held by it to a Person who becomes a Substitute Limited Partner, such transferring Limited Partner shall thereupon cease to be a Limited Partner, provided that such transferring Limited Partner shall not thereby be relieved of any of its obligations or liabilities hereunder that have arisen or are referable to the period prior to such assignment.

**ARTICLE 15
DISPUTE RESOLUTION**

15.1 General

- (a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 4** (the “**Dispute Resolution Procedure**”).
- (b) Disputed Payment - If the amount or timing of any payment to the Partnership is disputed by a Partner, the Partner liable to pay shall make the payment in full on the date such payment is directed to be made by the General Partner, prior to initiating any Dispute Resolution Procedure relating thereto.
- (c) 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 15**, without prejudice to any Party’s rights pursuant to this Agreement.

**ARTICLE 16
MISCELLANEOUS PROVISIONS**

16.1 Notices

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

To Nalcor LP

Labrador-Island Link Holding Corporation
c/o Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John’s, NL A1B 0C9

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

with a copy to:

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

Attention: Corporate Secretary
Fax: (709) 737-1782

To the General Partner:

Labrador-Island Link General Partner Corporation
c/o Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL A1B 0C9

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

with a copy to:

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

Attention: Corporate Secretary
Fax: (709) 737-1782

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.

16.2 **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.

16.3 Announcements

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

16.4 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.

16.5 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.

16.6 Time of the Essence

Time shall be of the essence.

16.7 No Waiver

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

16.8 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.

16.9 **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.

16.10 **Limited Partner Not a General Partner**

If any provision of this Agreement has the effect of imposing upon any Limited Partner (other than the General Partner) any of the liabilities or obligations of a general partner under the Act, that provision will be of no force and effect.

16.11 **Successors and Assigns**

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

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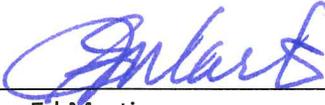
IN WITNESS WHEREOF the Parties have executed this Agreement as of the date first written above.

Executed and delivered by Labrador-Island Link General Partner Corporation, in the presence of:

LABRADOR-ISLAND LINK GENERAL PARTNER CORPORATION



Name: Rob Hull

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

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

We have authority to bind the corporation.

Executed and delivered by Labrador-Island Link Holding Corporation, in the presence of:

LABRADOR-ISLAND LINK HOLDING CORPORATION



Name: Rob Hull

By: 
Name: Tom Clift
Title: Chairperson

By: 
Name: Derrick Sturge
Title: President and Chief Executive Officer

We have authority to bind the corporation.

**LABRADOR-ISLAND LINK LIMITED PARTNERSHIP
LIMITED PARTNERSHIP AGREEMENT**

SCHEDULE 1

COST ACCOUNTING PROTOCOL

COST ACCOUNTING PROTOCOL

1.0 INTRODUCTION

- 1.1 Purpose of Protocol - The purpose of this Protocol is to set forth certain principles and guidelines that the Parties have agreed shall be adhered to and followed for the purposes of determining the Capital Costs incurred and to be incurred to carry out the Development Activities.
- 1.2 Application to Affiliates - The General Partner shall ensure compliance by its Affiliates with the requirements of this Protocol.

2.0 DEFINITIONS

In this Protocol:

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

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

“CAP Governed Entity” means any of the General Partner and its Affiliates that may incur Capital Costs;

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

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

- (a) indirect labour and associated benefits in service areas such as administration, general accounting, treasury, tax, human resources, payroll, information systems, research, corporate planning and economics, legal counsel, corporate management, risk management, internal audit, health and safety, office services and other similar functions; and
- (b) support service costs such as head office lease payments, leasehold improvements, depreciation charges, heat and light, insurance, property tax and maintenance and similar costs associated with operation and maintenance of facilities and equipment;

“Project” means any of the Lower Churchill Projects;

“Protocol” means this Cost Accounting Protocol; and

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

3.0 APPLICATION OF ACCOUNTING PRINCIPLES

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

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

- (a) third party costs - goods and services;
- (b) costs of financial, legal and other professional advisors;
- (c) internal labour and equipment;
- (d) internal Overhead allocation;
- (e) Financing Costs - equity component of AFUDC;
- (f) Financing Costs - debt component; and
- (g) other costs.

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

4.0 CAPITAL COSTS

4.1 Qualification as Capital Costs - Subject to **Section 4.2**, all costs incurred by a CAP Governed Entity that are:

- (a) properly incurred in connection with the Development Activities;
- (b) authorized at the appropriate level of approval for expenditures in accordance with the project policies; and
- (c) recorded and, where appropriate, allocated in accordance with this Protocol,

constitute Capital Costs for the purposes of the Agreement.

4.2 Exclusions - For greater certainty, Financing Costs are not Capital Costs.

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

- (a) costs associated with goods or services received from a third party;
- (b) internal direct labour costs including salary and benefits costs, including:
 - (i) engineering employee costs;
 - (ii) project management employee costs; and
 - (iii) internal support labour costs (e.g. legal);
- (c) overhead incurred in support of Development Activities, determined based on actual costs incurred and either allocated to the Actual Capital Costs of the LIL in accordance with the cost allocation principles contained in this Protocol, or charged directly to the Actual Capital Costs of the LIL and consistent with the CAP Governed Entities' respective corporate overhead allocation policies;
- (d) costs incurred in connection with agreements with aboriginal groups to permit the LIL Project to proceed; and
- (e) costs incurred in connection with the environmental assessment and approval process for the LIL Project.

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

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

5.0 COST ALLOCATION PRINCIPLES AND METHODOLOGY

5.1 General - Each CAP Governed Entity shall adopt and follow a methodology for recording and allocating Capital Costs that is consistent with the principles, guidelines and requirements set forth in this **Section 5.0**, having regard to Applicable Law and the requirements of applicable Authorized Authorities.

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

- 5.3 Allocation of Costs - Consistent with the matching concept, costs should be allocated to an object based on a “cause and effect” relationship where the cost is allocated to whatever causes or drives the cost. If the driver of a cost cannot be identified, or identified easily, then the cost should be allocated to the appropriate objects in a fair and equitable manner.
- 5.4 Allocation Process - Allocation is the process of assigning a single cost to more than one cost object. There are three aspects of cost allocation: (i) choosing the object of costing, (ii) choosing and accumulating the costs that relate to the object of costing, and (iii) choosing an appropriate method of allocating the cost to the object. The objectives of cost allocation require that the allocation:
- (a) must have a purpose and be relevant, meaning that the cost should be allocated;
 - (b) should be equitable, which means that a service was performed, the recipient received a benefit from it, and the cost was reasonable;
 - (c) should be identifiable or traceable; and
 - (d) should be supported by a methodology that complies with the applicable Accounting Principles and takes into account regulatory requirements.
- 5.5 Guiding Principles - A CAP Governed Entity’s cost allocation methodology should be:
- (a) fair and equitable;
 - (b) easy to administer and understand;
 - (c) applied systematically and consistently;
 - (d) changed only when there is a fundamental change in the delivery and/or application of the service associated with the costs being allocated;
 - (e) dynamic and flexible to ensure alignment with the matching concept;
 - (f) accommodate inclusion of new projects sharing a benefit or deriving a specific benefit from the service to which the allocated costs pertain; and
 - (g) subject to due diligence review pursuant to **Section 5.8**.
- 5.6 Principles of Application of Allocation Methodology
- (a) Costs should be allocated based on factors that most fairly and accurately allocate costs to the drivers of those costs.
 - (b) The allocation methodology should identify a specific charge to a Project where possible or, where not possible, facilitate cost allocation to that Project.

- (c) Cost allocation can be achieved by applying one or more of the following application principles:
- (i) *Direct* - Whenever possible, costs directly related to a specific Project should be directly charged to that Project.
 - (ii) *Availability* - Fixed costs of a service available to more than one Project on an equal basis should be allocated equally to the Projects that derive equal benefit, where a Project is deemed to benefit equally if the service is made available to it, whether the service is used or not.
 - (iii) *Usage* - Variable costs of a service available to more than one Project should be allocated to Projects based on their usage of the service.
 - (iv) *Proration* - A proportionate allocation could use financial or volumetric factors representing the magnitude of the Project, acting as a proxy for the amount of effort required to manage or support that Project. For example the annual budget of each Project could form the basis of a proportionate allocation, adjusted periodically, using actual cost as the basis of allocation, if the variance is significant enough to warrant such an adjustment.
 - (v) *Agreed Split* - Where the amount of service or activity is not material, a reasonable predetermined split should be mutually agreed and applied.

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

- (a) identification of the object of the cost;
- (b) the source of the cost to be allocated;
- (c) the rationale for allocation;
- (d) the determination of how much is allocated and frequency of allocation; and
- (e) a process for performing periodic due diligence reviews pursuant to **Section 5.8**.

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

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

6.0 DISPUTES

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

**LABRADOR-ISLAND LINK LIMITED PARTNERSHIP
LIMITED PARTNERSHIP AGREEMENT**

SCHEDULE 2

FORM OF TRANSFER

This transfer is consented to this day of , 20__.

Labrador-Island Link General Partner Corporation
in its capacity as General Partner of
Labrador-Island Link Limited Partnership

By:

Name:

Title:

I have authority to bind the General Partner

ASSIGNEE AGREEMENT

1. Subject to and in consideration of the consent by the General Partner to this assignment given in accordance with the terms of the Partnership Agreement, the above named assignee (“**Assignee**”) accepts the above transfer and assignment and agrees in favour of the General Partner and each of the Limited Partners to be bound, as a Limited Partner, by the terms of the Partnership Agreement as from time to time amended and in effect.
2. The Assignee represents and declares that it has the capacity and competence to enter into and be bound by the Partnership Agreement.
3. The Assignee hereby agrees to be bound as a Partner in the Partnership by the terms of the Partnership Agreement as from time to time amended and in effect and the Assignee hereby expressly ratifies and confirms the power of attorney given to the General Partner in **Section 2.10** of the Partnership Agreement; and by way of confirmation thereof:
 - (a) the Assignee hereby irrevocably nominates, constitutes and appoints the General Partner, with full power of substitution, as the Assignee’s agent and true and lawful attorney to act on the Assignee’s behalf with full power and authority in the Assignee’s name, place and stead to execute and record or file as and where required:
 - (i) the Partnership Agreement, any amendment to the Partnership Agreement subject to required Partner approval, if any, and any other instruments or documents but only to the extent required to continue and keep in good standing the Partnership as a limited partnership under the Act, or otherwise to comply with the laws of any jurisdiction in which the Partnership may carry on business or own or lease property in order to maintain the limited liability of the Limited Partners and to comply with the Applicable Law of that jurisdiction (including any amendments to the Certificate or the Register as may be necessary to reflect the admission to the Partnership of subscribers for or transferees of Partnership Interests as contemplated by the Partnership Agreement);
 - (ii) all instruments and any amendments to the Certificate necessary to reflect any amendment to the Partnership Agreement;
 - (iii) any instrument required in connection with the dissolution and termination of the Partnership in accordance with the provisions of the Partnership Agreement, including any elections, determinations or designations in respect of such dissolution and termination under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province or jurisdiction;
 - (iv) the documents necessary to be filed with the appropriate Authorized Authority in connection with the Business, property, assets and undertaking of the Partnership;

- (v) the documents on the Assignee's behalf and in the Assignee's name as may be necessary to give effect to the admission of a transferee of a Partnership Interest in the Partnership;
 - (vi) any election, determination, designation, information return or similar document or instrument as may be required or desirable at any time under the Tax Act or under any other taxation legislation or laws of like import of Canada or of any province or jurisdiction which relates to the affairs of the Partnership or its Affiliates or the interest of any Person in the Partnership; and
 - (vii) all other instruments and documents on the Assignee's behalf and in the Assignee's name or in the name of the Partnership as may be deemed necessary by the General Partner to carry out fully this Agreement in accordance with its terms.
 - (b) The power of attorney granted in this Assignee Agreement is irrevocable, is a power coupled with an interest and is given for consideration, and will survive the transfer or assignment by the Assignee of the whole or any part of the interest of the Assignee in the Partnership and extends to the successors, transferees and assigns of the Assignee, and may be exercised by the General Partner on behalf of the Assignee by executing any instrument by a facsimile signature or by listing all the Partners and executing that instrument with a single signature as attorney and agent for all of them.
 - (c) The Assignee agrees to be bound by any representation or action made or taken by the General Partner with respect to such Assignee pursuant to such power of attorney and hereby waives any and all defences which may be available to contest, negate or disaffirm the action of the General Partner taken in good faith under such power of attorney.
 - (d) The foregoing power of attorney shall be governed by the laws of the Province of NL and the federal laws of Canada applicable therein.
 - (e) The foregoing power of attorney will continue in respect of the General Partner so long as it is the General Partner of the Partnership, and will terminate thereafter, but will continue in respect of a new General Partner as if the new General Partner were the original attorney.
4. The Assignee represents and warrants as follows (and such representations and warranties will survive closing of the purchase by the Assignee of the Partnership interest):
- (a) the Assignee is a Qualified Partner within the meaning and for the purposes of the Partnership Agreement;
 - (b) the Assignee has its chief executive office at the address set out below under its signature;

- (c) the Assignee is aware that it is purchasing the Partnership Interest pursuant to an exemption under applicable Securities Legislation and, as a consequence:
 - (i) it is restricted from using most of the civil remedies available under Securities Legislation;
 - (ii) it may not receive information that would otherwise be required to be provided to it under Securities Legislation; and
 - (iii) the Partnership is relieved of certain obligations that would otherwise apply under Securities Legislation;
- (d) the Assignee has full power and authority to execute this Assignee Agreement, the Partnership Agreement and all other agreements contemplated thereby required to be signed by it and to take all actions required pursuant hereto and has obtained all necessary approvals of directors, shareholders, partners, members or others;
- (e) the Assignee has duly authorized, executed and delivered this Assignee Agreement and each of this Assignee Agreement and the Partnership Agreement, when executed by the Assignee, will constitute a legal, valid and binding obligation of the Assignee enforceable against the Assignee in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws affecting the enforcement of creditor's rights generally and general principles of equity;
- (f) the Assignee is purchasing the Partnership Interest as principal for the Assignee's own account, and not for the benefit of any other Person, for investment only and not with a view to resale or distribution;
- (g) the Assignee was offered the Partnership Interest in NL and intends that the Securities Legislation of NL govern the Assignee's acquisition;
- (h) the Assignee understands that an investment in the Partnership involves a high degree of risk, has such knowledge and experience in financial and business matters, investments, securities and private placements as to be capable of evaluating the merits and risks of its investment in the Partnership Interest, is in a financial position to hold the Partnership Interest for an indefinite period of time, and is able to bear the economic risk of and withstand a complete and total loss of, such investment in the Partnership Interest;
- (i) any resale of the Partnership Interest will be made in compliance with the requirements of applicable Securities Legislation;
- (j) the Assignee will maintain its status as described above and that it will not transfer or purport to transfer its Partnership Interest in whole or in part to any Person who would be unable to make the foregoing representations and warranties; and

- (k) the Assignee acknowledges that it has been encouraged to and should obtain independent legal, tax and investment advice with respect to its acquisition of the Partnership Interest and accordingly, to the extent it requires, has been independently advised as to the meanings of all relevant terms contained herein for the purpose of giving representations, warranties and covenants under this Assignee Agreement.
5. The Assignee covenants and agrees that it will maintain its status as described in Section 2.7(b) of the Partnership Agreement and **Section 4** of this Assignee Agreement and that it will not transfer or purport to transfer its Partnership Interest to any Person who is or would be unable to make the representations and warranties in Section 2.7(b) of the Partnership Agreement and **Sections 4(a), (c), (d) and (f) to (j)** inclusive of this Assignee Agreement and, insofar as the enforceability of an assignment equivalent to this assignment and the Partnership Agreement is concerned, **Section 4(e)** of this Assignee Agreement.
6. The Assignee acknowledges that, among other things, the Partnership Agreement provides that if at any time a Limited Partner is a non-resident of Canada for purposes of the Tax Act, the General Partner may, in the circumstances and under the terms and conditions set forth in Section 2.7(d) of the Partnership Agreement, require that Limited Partner to transfer its Partnership Interest to a Person which qualifies as a Qualified Partner.

[Remainder of this page intentionally left blank.]

DATED this day of , 20__.

[name of Assignee]

By:

Name:

Title:

I have authority to bind the Assignee

Assignee

Address of Chief Executive Office:

**LABRADOR-ISLAND LINK LIMITED PARTNERSHIP
LIMITED PARTNERSHIP AGREEMENT**

SCHEDULE 3

DISTRIBUTIONS COMPUTATION EXAMPLES

Distributable Cash and Net Income

Distributions to the Limited Partners of cash and Net Income during the operational period are addressed in the definition of Distributable Cash and in Section 5 of the Agreement. This Schedule provides illustrations of these provisions.

The illustrations below exclude consideration of any Prepaid Rent, required Reserves, Cost Overruns, and any Taxes other than as related to the Tax Adjustment Amount.

All figures in this Schedule are purely illustrative and are not to be taken as representing the financial projections of any Partner.

In the illustrative tables, totals may not add due to rounding.

Part 1: Definitions

In this Schedule:

“**DEPREC**” means depreciation on rate base, expressed as a dollar amount, this value being equal to Annual Depreciation on the LIL;

“**DER**” means debt:equity ratio, expressed in this Schedule as the percentage of debt divided by the sum of debt plus equity for a Limited Partner or the Partnership. For clarity, a DER of 55:45 as defined in the Agreement would be a DER of 55% in this Schedule;

“**DPA**” means debt principal amortization, expressed as a dollar amount;

“**e**” as a subscript refers to Emera NL share.

“**Emera NL**” means ENL Island Link Incorporated;

“**FFD**” means funds for distribution to unit-holders, this being equal to Distributable Cash;

“**INT%**” means the cost of debt expressed as a percentage;

“**INT\$**” means interest cost in dollars;

“**LIL LP**” means the Partnership;

“**n**” as a subscript refers to Nalcor LP share;

“**OPEX**” means the administrative expenses of LIL LP;

“**PCTCA**” means the Limited Partner share of Capital Account expressed as a percentage;

“**RB**” means rate base, the remaining undepreciated average rate base at any point in time, expressed as a dollar amount; this value being equal to the Undepreciated Capital Asset;

“**REV**” means revenue to LIL LP;

“RORB%” means return on rate base expressed as a percentage;

“RORB\$” means the return on rate base expressed as a dollar amount;

“t” as a subscript refers to the LIL in its entirety; and

“TX” means the Tax Adjustment Amount.

Part 2: LIL LP Revenue

Distributions are ultimately funded by Partnership revenue; Distributable Cash is defined as “all cash inflows to the Partnership... less cash reasonably required to...” meet Partnership obligations.

The Parties anticipate that Partnership revenues will be realized substantially according to the framework set out below.

LIL LP will realize revenue in accordance with the LIL Assets Agreement.

LIL LP is expected to earn revenue (REV) to recover:

- Applicable administrative expenses of the Partnership (OPEX) (excluding Operating and Maintenance Costs of the LIL, which are the responsibility of Opco);
- Annual Depreciation on the LIL (DEPREC), that being (for the initial development of the LIL) the Undepreciated Capital Asset as at First Commercial Power divided by the Service Life of the LIL;
- The Tax Adjustment Amount; and
- A return on the rate base (RB, equal to the Undepreciated Capital Asset, RORB\$):
 - The percentage return on the Undepreciated Capital Asset (RORB%) is equal to:
 - The cost of debt as a percent; plus
 - Rate of Return on Equity (RROE), a percentage value determined by the PUB or other Authorized Authority,
 - Weighted according to the DER of the Partnership;
 - The return on the Undepreciated Capital Asset in dollars (RORB\$) is equal to the rate base (RB, equal to the Undepreciated Capital Asset) times the return on rate base (RORB%) as a percentage, averaging as appropriate.

Algebraically:

- $REV_t = OPEX + TX + RORB\$t + DEPREC_t$;
- $RORB\% = INT\% \times DER + RROE \times (1-DER)$;
- $RORB\$ = RB \times RORB\%$;
- $DEPREC = RB \text{ (initial) / the Service Life, that being 50 years in this example}$;
- $DPA = \text{Debt principal amortization, the initial debt balance divided by the Service Life, that being 50 years in this example}$

In the example below, OPEX is assumed to be \$15 annually, and TX to be \$25 annually

LIL LP Revenue (annual examples)	
OPEX	\$15
TX	\$25
DEPREC	\$54
DERt	69.2%
INT%	7.0%
RROE of the Partnership	9.0%
RORB%	7.6%
<hr/>	
RB (in the initial period, before depreciation)	\$2,686
Debt	\$1,859
INT\$	\$130
Equity (Capital Account)	\$827
RORB\$	\$205
Total revenue (OPEX + TX + DEPREC + RORB\$)	\$298
<hr/>	
RB (in a period half way through the Service Life)	\$1,343
Debt	\$929
INT\$	\$65
Equity (Capital Account)	\$414
RORB\$ in this period	\$102
Total revenue (OPEX + TX + DEPREC + RORB\$)	\$196

Section 5.1: Allocation Among Limited Partners - Net Income

The example below illustrates the derivation and allocation of Net Income. This example does not incorporate amounts related to Reserves, Prepaid Rent, Taxes other than as related to the Tax Adjustment Amount, and Cost Overruns.

The example below demonstrates that LIL LP Net Income is equal to REV less the deductions shown. Net Income less the portion of Net Income allocated to the Tax Adjustment Amount is equal to the Capital Account balance times RROE of the Partnership. Dollar amounts are consistent with the examples used in sections above.

Allocation of Net Income	Nalcor LP	Emera NL	Total Partnership
Revenue (REV)			\$196
Less: OPEX			\$15
Less: DEPREC			\$54
Less: INT\$			\$65
Net income (absent Prepaid Rent Reserves and amounts related to Cost Overruns)			\$62
Portion of Net Income allocated to Emera NL as TX			\$25
Remaining Net Income to be allocated			\$37
Also equals ROE:			
Capital Account			\$414
RROE			9.0%
ROE			\$37
Partnership Interest	57.6%	42.4%	100.0%
Allocation of Net Income excluding TX	\$21	\$16	\$37

Part 3: “Distributable Cash” Definition and Section 5.3: Disbursements per Waterfall

The framework for cash distributions is set out in the definition of Distributable Cash, and in Section 5.3 of the Agreement.

Algebraically, cash for distribution (FFD) is expected to follow the following expression, again excluding amounts related to Prepaid Rent, Reserves, Taxes other than as related to the Tax Adjustment Amount, and Cost Overruns:

$$FFDt = RORB\$_t + DEPREc_t - INTt - DPAt = REVt - OPEX - INTt - DPAt - TX$$

$$FFDn = FFDt \times PCTCAN$$

$$FFDe = FFDt \times PCTCAe$$

$$\text{Total distribution to Emera NL} = FFDe + TX$$

Allocation of Net Income	Nalcor LP	Emera NL	Total Partnership
Revenue (REV)			\$196
Less: OPEX			\$15
Less: DEPREC			\$54
Less: INT\$			\$65
Net income (absent Prepaid Rent Reserves and amounts related to Cost Overruns)			\$62
Portion of Net Income allocated to Emera NL as TX			\$25
Remaining Net Income to be allocated			\$37
Also equals ROE:			
Capital Account			\$414
RROE			9.0%
ROE			\$37
Partnership Interest	57.6%	42.4%	100.0%
Allocation of Net Income excluding TX	\$21	\$16	\$37

Part 4: Section 5.6(b): Allocation of Depreciation

Section 5.6(b) of the Agreement makes reference to “...the capital portion of any Distribution...”. This capital portion, and also debt principal amortization, are funded by depreciation (DEPREC) as described below.

Included in debt service is debt principal amortization (DPA) and included in Partnership Distributions (FFD) is a return of Capital Account.

Depreciation, calculated on a straight-line basis, is a level value in each period (absent a revision of the Service Life), being a fixed initial value (for the initial build of the LIL, the Undepreciated Capital Asset as at First Commercial Power) divided by a fixed Service Life. It is allocated between debt amortization and equity retirement according to the LIL LP DER; depreciation in the current example is allocated 69.2% to amortization of debt principal and 30.8% return of partner capital.

The debt amortization amount is included in debt service (along with interest expense) and the return of equity capital is included in Partnership distributions (along with dollar return on equity).

Because depreciation is allocated according to the DER at any point in time, allocation of depreciation will not cause a change in DER.

Allocation of Annual Depreciation on the LIL	Nalcor LP	Emera NL	Total Partnership
Annual Depreciation on the LIL			\$54
Amount allocated to DPA			69.2%
			\$37
Amount allocated to return of Capital Account			30.8%
	\$10	\$7	\$17
PCTCA	57.6%	42.4%	

**LABRADOR-ISLAND LINK LIMITED PARTNERSHIP
LIMITED PARTNERSHIP AGREEMENT**

SCHEDULE 4

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

SECTION 1 – INTERPRETATION

1.1 Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Section References

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

1.3 Appendix

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

Appendix A - *Commercial Arbitration Code (Canada)*

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 Purpose and Sequence of Dispute Resolution

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

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

2.2 Confidentiality

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

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

2.3 Interim Measures

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

2.4 Parties to Proceedings

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

2.5 Mediator or Arbitrator as Witness

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

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

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

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

3.2 Reservation of Rights

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

3.3 Failure of Negotiations

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

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

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

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

4.2 Appointment of Mediator

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

4.3 Mediation Process

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

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

4.4 Reservation of Rights

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

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

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

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

5.2 Provisions Relating to the Arbitration Act and the Code

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

5.3 Appointment of Tribunal

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

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

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

5.4 Arbitration by Single Arbitrator

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

5.5 Procedure

- (a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.
- (b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.
- (c) If the Parties initiate multiple arbitration proceedings under the Agreement and other agreements relating to the Defined Assets, 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 the Defined Assets, or during the preceding three years performed any other work for either of the Parties or any of their Affiliates. Any direct or beneficial equity interest the Independent Expert has in one or more of the Parties or their Affiliates, or *vice versa*, shall be declared by each Party and the Independent Expert prior to the Independent Expert being retained.

6.3 Selection of the Independent Expert

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

6.4 **Terms of Reference**

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

6.5 **Information Provided to Independent Expert**

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

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

6.6 **Dispute Context**

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

6.7 **No ex parte Communication**

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

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

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

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

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

6.9 **Written Submissions and Responses**

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

6.10 **Independent Expert Clarifications**

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

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

6.11 **Method of Evaluation**

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

6.12 **Decision and Presentation of Report**

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

6.13 **Costs of Expert Determination**

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

6.14 **Effect of Determination**

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

6.15 **Settlement**

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

**Appendix A
to Dispute Resolution Procedure**

COMMERCIAL ARBITRATION CODE

Appendix A COMMERCIAL ARBITRATION CODE

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

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

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

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

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1 SCOPE OF APPLICATION

- (1) This Code applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.
- (2) The provisions of this Code, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.
- (3) This Code shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Code.

ARTICLE 2 DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this Code:

- (a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;
- (b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;
- (c) "court" means a body or organ of the judicial system of a State;
- (d) where a provision of this Code, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;
- (e) where a provision of this Code refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;
- (f) where a provision of this Code, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

- (1) Unless otherwise agreed by the parties:
- (a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;
- (b) the communication is deemed to have been received on the day it is so delivered.
- (2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

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

ARTICLE 5
EXTENT OF COURT INTERVENTION

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

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

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

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

- (1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
- (2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

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

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

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

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

ARTICLE 11
APPOINTMENT OF ARBITRATORS

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

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

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

ARTICLE 12 GROUNDS FOR CHALLENGE

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

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

ARTICLE 13 CHALLENGE PROCEDURE

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

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

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

ARTICLE 14 FAILURE OR IMPOSSIBILITY TO ACT

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

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

ARTICLE 15
APPOINTMENT OF SUBSTITUTE ARBITRATOR

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

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

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

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

ARTICLE 17
POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

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

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18
EQUAL TREATMENT OF PARTIES

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

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

(1) Subject to the provisions of this *Code*, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(2) Failing such agreement, the arbitral tribunal may, subject to the provisions of this *Code*, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to determine the admissibility, relevance, materiality and weight of any evidence.

ARTICLE 20
PLACE OF ARBITRATION

(1) The parties are free to agree on the place of arbitration. Failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(2) Notwithstanding the provisions of paragraph (1) of this article, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property or documents.

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

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

ARTICLE 22
LANGUAGE

(1) The parties are free to agree on the language or languages to be used in the arbitral proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.

(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

(1) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting his claim, the points at issue and the relief or remedy sought, and the respondent shall state his defence in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence they will submit.

(2) Unless otherwise agreed by the parties, either party may amend or supplement his claim or defence during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

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

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

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

ARTICLE 25
DEFAULT OF A PARTY

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

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

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

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

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

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

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

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

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

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

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

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28

RULES APPLICABLE TO SUBSTANCE OF DISPUTE

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

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

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

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

ARTICLE 29

DECISION-MAKING BY PANEL OF ARBITRATORS

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

ARTICLE 30

SETTLEMENT

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

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

ARTICLE 31

FORM AND CONTENTS OF AWARD

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

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

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

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

ARTICLE 32
TERMINATION OF PROCEEDINGS

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

ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

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

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

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

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34

APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

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

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35

RECOGNITION AND ENFORCEMENT

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

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

ARTICLE 36
GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

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

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

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

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

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

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

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

(b) if the court finds that:

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

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

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