

NALCOR ENERGY

and

EMERA INC.

AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT

July 31, 2014

AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT

THIS AMENDED AND RESTATED SUPPLEMENTAL AGREEMENT is made effective the 31st day of July, 2014 (the "A&R Effective Date")

BETWEEN:

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

- and -

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

WHEREAS:

- A. the Parties entered into a Term Sheet dated November 18, 2010 (the "**Term Sheet**") confirming their common understanding of the purpose, process and timing for the supply and delivery of power and energy from the Province of Newfoundland and Labrador to the Province of Nova Scotia, other Canadian provinces and New England;
- B. the Parties identified in the Term Sheet certain possible future activities and transactions that could be of mutual benefit and wish to retain a formal memorandum of those matters to facilitate future discussions at the appropriate time;
- C. on July 31, 2012 Nalcor and Emera entered into the original version of this Agreement (the "**Original Supplemental Agreement**");
- D. contemporaneously with the execution and delivery of this Agreement, Nalcor and Emera are entering into an amended and restated Maritime Link Joint Development Agreement (the "**A&R ML-JDA**"); and
- E. Nalcor and Emera wish to amend and restate the Original Supplemental Agreement to update certain provisions and make other amendments for consistency with the A&R ML-JDA;

NOW THEREFORE this Agreement witnesses that in consideration of the mutual covenants and agreements hereinafter contained the Parties agree as follows:

ARTICLE 1 INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

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

“A&R ML-JDA” has the meaning set forth in the preamble to this Agreement;

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

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

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

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

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

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

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

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

“**Effective Date**” means July 31, 2012;

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

“**Emera Rights**” has the meaning set forth in **Section 7.2(a)**;

“**Energy**” means electrical energy measured and expressed in megawatt hours;

“**Energy Access Agreement**” means the agreement dated October 20, 2013 between Nalcor, Emera and NSPI relating to access to Nalcor market-priced Energy, and includes the final definitive agreement pursuant thereto;

“**Energy and Capacity Agreement**” means the agreement dated July 31, 2012 between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block, as defined therein;

“**Formal Agreements**” has the meaning set forth in the ML-JDA;

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

“**Labrador-Island Link**” means an HVdc transmission line and related components to be constructed by or on behalf of the Labrador Island Link Limited Partnership from central Labrador to Soldiers Pond, NL;

“**Losses**” means any and all losses, damages, costs, expenses, charges, fines, penalties and injuries of every kind and character;

“**Maritime Link**” means the transmission facilities to be constructed between the Island Interconnected System and the bulk energy transmission system in NS in accordance with the Maritime Link Joint Development Agreement;

“**Maritime Link Expansion**” means activities, additions or upgrades that are designed to increase the capacity limits of the Maritime Link in excess of the transmission capacity of the Maritime Link as established at the A&R Effective Date;

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

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

“NL” means the Province of Newfoundland and Labrador;

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

“NS” means the Province of Nova Scotia;

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

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

“Nalcor Rights” has the meaning set forth in **Section 7.1(a)**;

“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 8.1**;

“Original Supplemental Agreement” has the meaning set forth in the preamble to this Agreement;

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

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

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

“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;

“Sanction Agreement” means the agreement dated December 17, 2012 between Nalcor and Emera;

“Service Life” has the meaning set forth in the Energy and Capacity Agreement;

“**Term Sheet**” has the meaning set forth in the preamble to this Agreement; and

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

1.2 Construction of Agreement

- (a) Interpretation Not Affected by Headings, etc - The division of this Agreement into articles, sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an “**Article**” or “**Section**” followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms “**this Agreement**”, “**hereof**”, “**herein**”, “**hereby**”, “**hereunder**” and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.
- (b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.
- (c) “Including” - The word “including”, when used in this Agreement, means “including without limitation”.
- (d) 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.
- (e) 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.
- (f) No Drafting Presumption - The Parties acknowledge that their respective legal advisors have reviewed and participated in settling the terms of this Agreement and agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting Party shall not apply to the interpretation of this Agreement.

1.3 Applicable Law and Submission to Jurisdiction

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

1.4 Effect of Agreement

- (a) Binding Provisions - **Articles 1, 5, 6, 7 and 8** are binding on the Parties. **Section 4.1** is binding on the Parties solely as to the obligation to commence and the right to terminate the negotiations referred to therein.
- (b) Non-Binding Provisions - **Articles 2, 3 and 4**, except **Section 4.1** to the extent that it is binding pursuant to **Section 1.4(a)**, are not binding on the Parties and neither Party will be legally bound or otherwise incur any obligation with respect to any of the matters referred to therein unless and until such time as a definitive binding agreement with respect thereto is executed by the Parties.
- (c) Disclaimer - Except for liability arising from a breach of **Article 6** or **Article 7**, neither Party shall make any Claim against, nor be liable to, the other Party for any Claims whatsoever for any reason with respect to any matter arising out of or relating to this Agreement.

1.5 Inter-Relationship with Original Supplemental Agreement

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

1.6 Performance of Obligations

A Party required to perform an obligation under this Agreement shall:

- (a) perform such obligation; or
- (b) cause such obligation to be performed by an Affiliate of such Party and shall remain liable to the other Party as a primary obligor to perform such obligation.

**ARTICLE 2
ADDITIONAL ENERGY**

2.1 **Possible Sales of Energy or Capacity**

Subject to **Section 2.2**, if Nalcor has an alternative market into which Nalcor desires to make a sale of short-term Energy or Capacity, which Energy or Capacity is available for delivery over the Maritime Link, and Emera has expressed to Nalcor a desire to receive such Energy or Capacity, then Nalcor may sell this Energy or Capacity to Emera on terms mutually agreeable to the Parties and at a price that reflects the conditions and prevailing market price available to Nalcor such that Nalcor is kept whole with respect to the financial return it would have received had it sold this Energy or Capacity into such alternative market.

2.2 **Scope of Section 2.1**

Section 2.1 only relates to Energy or Capacity that Nalcor is not obligated to make available for sale to NSPI pursuant to the Energy Access Agreement.

**ARTICLE 3
MARITIME LINK EXPANSION**

3.1 **Negotiations**

If the Parties decide a Maritime Link Expansion is necessary, the Parties will make good faith efforts to identify the optimal manner and ownership structure to construct a Maritime Link Expansion.

3.2 **Sole Development**

If the Parties decide a Maritime Link Expansion is necessary and one Party decides not to invest in a Maritime Link Expansion, the other Party has the right to proceed to complete such a Maritime Link Expansion on its own.

3.3 **Nalcor Right to Capacity**

Regardless of the ownership or ownership structure, Nalcor will have the right to acquire, on mutually acceptable commercial terms, any and all additional transmission capacity created as a result of a Maritime Link Expansion.

**ARTICLE 4
MARITIME LINK REDEVELOPMENT**

4.1 **Negotiations**

No later than eight years prior to the end of the latest estimate of the Service Life of the Maritime Link, the Parties will commence negotiations with respect to terms on which the Parties might proceed with a Maritime Link Redevelopment. Either Party may require commencement of such negotiations by giving Notice thereof to the other Party. Following the

giving of such Notice, either Party may at any time terminate such negotiations by giving Notice thereof to the other Party.

4.2 ML Redevelopment

If the Parties decide a Maritime Link Redevelopment is necessary, the Parties will make good faith efforts to identify the optimal manner and ownership structure to construct a Maritime Link Redevelopment.

4.3 Nalcor Right to Capacity

Regardless of the ownership and ownership structure, Nalcor will have the right to acquire, on mutually acceptable commercial terms, any and all transmission capacity created as a result of a Maritime Link Redevelopment.

ARTICLE 5 TERM AND TERMINATION

5.1 Term

The term of this Agreement commenced on the Effective Date and shall terminate on the earliest to occur of:

- (a) [Intentionally deleted.]
- (b) the end of the Service Life;
- (c) on Notice of termination given by the non-defaulting Party at its option, if the Energy and Capacity Agreement is terminated for default; and
- (d) written agreement of the Parties to terminate.

5.2 Effect of Termination

When this Agreement terminates:

- (a) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any dispute); and
- (b) neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in **Section 5.2(a)** and any other obligations that survive termination pursuant to **Section 8.7**.

**ARTICLE 6
CONFIDENTIALITY**

6.1 Incorporation of Project NDA

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

6.2 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 7
ASSIGNMENT**

7.1 Nalcor Assignment Rights

- (a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement (the “**Nalcor Rights**”) without the prior written consent of Emera, which consent may be arbitrarily withheld.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.
- (c) Non-Permitted Assignment - Any assignment in contravention of this **Section 7.1** will be null and void.

7.2 Emera Assignment Rights

- (a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement (the “**Emera Rights**”) without the prior written consent of Nalcor, which consent may be arbitrarily withheld.
- (b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.
- (c) Non-Permitted Assignment - Any assignment in contravention of this **Section 7.2** will be null and void.

ARTICLE 8
MISCELLANEOUS PROVISIONS

8.1 **Notices**

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

To Nalcor:

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

with a copy to:

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

To Emera:

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

with a copy to:

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

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

8.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof (including the Term Sheet, the Sanction Agreement and, subject to **Section 1.5**, the Original Supplemental Agreement).

8.3 Counterparts

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

8.4 Announcements

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

8.5 Relationship of the Parties

The Parties hereby disclaim any intention to create by this Agreement any partnership, joint venture, association, trust or fiduciary relationship between them and this Agreement shall not be construed or considered as constituting either Party as the agent or legal representative of the other Party for any purpose nor to permit either Party to enter into agreements or incur any obligations for or on behalf of the other Party.

8.6 Amendments

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

8.7 **Survival**

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement 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.

8.8 **Successors and Assigns**

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

8.9 **Waiver of Sovereign Immunity**

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

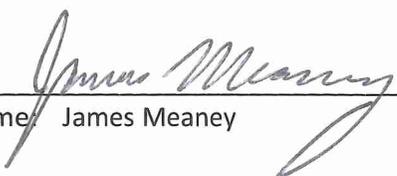
8.10 **Capacity of Nalcor**

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

[Remainder of this page intentionally left blank.]

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

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

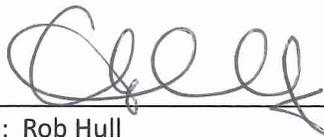

Name: James Meaney

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

Name: Rene Gallant

NALCOR ENERGY

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

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

We have authority to bind the corporation.

EMERA INC.

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

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

We have authority to bind the company.

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

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

NALCOR ENERGY

By: _____

Name: Ed Martin

Title: President and Chief Executive Officer

Name: James Meaney

By: _____

Name: Rob Hull

Title: General Manager, Finance

We have authority to bind the corporation.

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

EMERA INC.

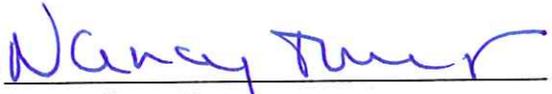
By:  _____

Name: Chris Huskilson

Title: President and Chief Executive Officer



Name: Rene Gallant

By:  _____

Name: Nancy Tower

Title: Executive Vice-President, Business
Development

We have authority to bind the company.