NALCOR ENERGY

and

EMERA INC.

and

NOVA SCOTIA POWER INCORPORATED

ENERGY ACCESS AGREEMENT

April 13, 2015

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Schedules:

THIS ENERGY ACCESS AGREEMENT is made effective the 13th day of April, 2015 (the "**Effective Date**").

B E T W E E N:

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

- and -

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

- and -

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

WHEREAS:

A. NSPML filed an application with the UARB on January 28, 2013, under the *Maritime Link Act*, S.N.S. 2012, c. 9 and the *Maritime Link Cost Recovery Process Regulations* (N.S. Reg. 189/2012);

B. the UARB's decision dated July 22, 2013 directed as a condition to its approval of the Maritime Link that NSPML obtain from Nalcor the right to access Nalcor market-priced Energy when needed to economically serve NSPI and its ratepayers, or provide some other arrangement to ensure access to market-priced Energy;

C. on November 29, 2013, the UARB issued a supplemental decision confirming that the market-priced Energy access arrangements provided for in the Initial EAA satisfy the condition of approval concerning market-priced Energy access and that the Maritime Link was therefore approved in accordance with its decisions of July 22, 2013 and November 29, 2013;

D. the Initial EAA contemplated that a definitive Energy Access Agreement would be entered into incorporating the commercial terms set forth in the Initial EAA as well as other legal provisions as are customary and appropriate for transactions of the nature provided for by the Initial EAA; and

E. the Parties now wish to confirm the terms and conditions under which they will enter into a definitive Energy Access Agreement.

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

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and, subject to **Section 1.2(h)**, in the Schedules:

"**ATIPPA**" has the meaning set forth in **Section 14.4(a)**;

"**Affiliate**" means, with respect to any Person, any other Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such Person; provided however that 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 Variance Amount**" has the meaning set forth in **Section 5.2**;

"**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;

"**Authorized Purpose**" has the meaning set forth in **Section 14.1(a)**;

"**Available Energy**" means Nalcor Generated Energy, exclusive of New Generation Development Energy, that is excess to the Energy quantities required by Nalcor and its Affiliates to satisfy NL Native Load and the Nova Scotia Block;

"**Available Transmission Path**" means available (but not necessarily contracted-for) Transmission Rights that would be sufficient to allow Nalcor or Emera, as applicable, to avail of an identified market opportunity for the sale of Energy, considering the applicable Energy quantity and the intended points of receipt and delivery associated with the given

transaction, provided that an Available Transmission Path may be comprised of either Sunk Transmission, or other available Transmission Rights that have been posted on an Open Access Same-Time Information System or comparable system by the applicable transmission provider, or any combination of the two and provided that Nalcor or Emera, as applicable, shall provide, as part of any bid submitted to NSPI pursuant to **Sections 2.3** or **5.5(d)** that references an alternative market opportunity, reasonable documentary evidence to establish an Available Transmission Path, at the time of and for the duration of the market opportunity, as of the date of such bid submission;

"**Balancing Services Agreement**" has the meaning set forth in **Section 5.8(a)**;

"**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;

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

"**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;

"**Claiming Party**" has the meaning set forth in **Section 16.2(a)**;

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

"**Commitment**" has the meaning set forth in **Section 4.1(a)**;

"**Confidential Information**" means:

(a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of the Disclosing Party, directly or indirectly, to the Receiving Party, including 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, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing

information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party, its Affiliates, this Agreement or the transactions contemplated hereunder; and

(b) all summaries, notes, analyses, compilations, studies and other records prepared by the Receiving Party that contain or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in the foregoing paragraph (a);

"**Confirmation**" has the meaning set forth in the Nalcor Master Agreement;

"**Contract Year**" means, during the Term, each period from September 1 to August 31, inclusive, following Full Commercial Operation;

"**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 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);

"**Day-Ahead Price**" has the meaning set forth in the ISO-NE Tariff;

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

"**Disclosing Party**" means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of another Party;

"**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 16**;

"**EEI Master Agreement**" means the Emera Master Agreement or the Nalcor Master Agreement, as required by the context;

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

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

"**Emera Affiliate Assignee**" means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 15.2**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

"**Emera Default**" has the meaning set forth in **Section 10.3**;

"**Emera Group**" has the meaning set forth in **Section 12.1(a)**;

"**Emera Hydrology Event**" means the occurrence of actual hydrologic conditions that have resulted or will result in less Stored Energy being available to Emera or its Affiliates than was forecasted by Emera at the time it prepared the applicable Variance Forecast. In respect of an inability by Emera to bid Energy in response to a NSPI Solicitation, the applicable Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of such NSPI Solicitation. In respect of an inability of Emera to deliver Energy to NSPI, the applicable Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of the NSPI Solicitation pursuant to which the delivery obligation arose;

"**Emera Master Agreement**" has the meaning set forth in **Section 5.6(b)**;

"**Emera Rights**" has the meaning set forth in **Section 15.2(a)**;

"**Emera Variance Amount**" has the meaning set forth in **Section 5.5(a)(i)**;

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

"**Energy**" means electrical energy measured and expressed in MWh, GWh or TWh;

"**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;

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

"**Force Majeure**" means an event, condition or circumstance (each, an "**event**") beyond the reasonable control of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder. Provided that the foregoing conditions are met, "**Force Majeure**" may include:

(a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or

other fire or other cause of air pollution, an epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;

(b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;

(c) a strike, lockout or other industrial disturbance;

(d) breakage or an accident or other inadvertent action or inability to act causing material physical damage to, or materially impairing the operation of, or access to, any of the Labrador-Island Link, Labrador Transmission Assets, the Island Interconnected System, any of the generating facilities used to produce Nalcor Generated Energy, or the Maritime Link or any machinery or equipment comprising part of or used in connection with any of such facilities;

(e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force, or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the delivery of the Nalcor Supplied Energy, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization;

(f) where claimed by Nalcor, the inability of the Maritime Link to receive, transmit or deliver Energy under the terms of the Maritime Link Transmission Service Agreements; and

(g) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery of the Nalcor Supplied Energy that is required by the applicable System Operator for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices,

but the following shall not be considered a Force Majeure event:

(i) lack of finances or changes in economic circumstances of a Party;

(ii) if the event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure;

(iii) an event described by subsections (a) or (b) of the definition of "Forgivable Event";

(iv) an event that results from a failure by a claiming Party to apply applicable NERC or NPCC standards relating to HVdc interconnections between bulk energy systems as required by an Authorized Authority; or

(v) any delay in the settlement of any Dispute;

"**Forced Outage**" means the removal from service availability of a generating unit, transmission line or other facility due to emergency reasons or due to the unanticipated failure of such equipment, other than by reason of the failure of the Party claiming the Forced Outage, or an Affiliate of that Party, to comply with Good Utility Practice in operating the applicable facility or facilities, provided that for the purpose of the interpretation and application of this definition only, Emera and NSPI shall be deemed not to be Affiliates;

"**Forgivable Event**" means any of the following, as applicable:

(a) a requirement by Nalcor or an Affiliate of Nalcor to utilize Energy in order to satisfy NL Native Load;

(b) a Hydrology Event;

(c) Force Majeure;

(d) a Safety Event;

(e) a Forced Outage; or

(f) an action required to be taken by a Party to comply with Good Utility Practice;

"**Formal Agreements**" means the following agreements dated July 31, 2012 between Nalcor and Emera:

(a) Maritime Link - Joint Development Agreement;

(b) Energy and Capacity Agreement;

(c) Maritime Link (Nalcor) Transmission Service Agreement;

(d) Maritime Link (Emera) Transmission Service Agreement;

(e) Nova Scotia Transmission Utilization Agreement;

(f) New Brunswick Transmission Utilization Agreement;

(g) MEPCO Transmission Rights Agreement;

(h) Interconnection Operators Agreement;

(i) Joint Operations Agreement;

(j) Newfoundland and Labrador Development Agreement;

(k) Labrador-Island Link Limited Partnership Agreement;

(l) Inter-Provincial Agreement; and

(m) Supplemental Agreement;

"**Full Commercial Operation**" means the date following the day upon which the latest of the following events occurs:

(a) the ML Commercial Operation Date;

(b) the completion of the start-up and testing activities required to demonstrate that four generating units at the Muskrat Falls Plant are ready to reliably operate in accordance with their design criteria;

(c) the completion of the start-up and testing activities required to demonstrate that the Labrador-Island Link is ready to reliably operate in accordance with its design criteria; and

(d) the completion of the start-up and testing activities required to demonstrate that the Labrador Transmission Assets are ready to reliably operate in accordance with their design criteria;

"**GHG Credits**" means greenhouse gas credits or allowances, including all attributes associated with renewable energy, associated with the displacement of generation from greenhouse gas emitting facilities;

"**GWh**" means gigawatt hours;

"**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);

"**Hydrology Event**" means a Nalcor Hydrology Event or an Emera Hydrology Event;

"**ISO-NE**" means ISO New England Inc. or any successor system operator with responsibility for operating the bulk energy transmission system in New England;

"**ISO-NE Tariff**" means the Transmission, Markets and Services Tariff issued by the ISO-NE, as it may be amended, restated, reissued or replaced from time to time;

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

"**Incremental Cost Rate**" means the rate in dollars per MWh that is equal to, as applicable, (a) NSPI's incremental incurred cost associated with generating or purchasing the MWh of Energy not delivered by Nalcor during the corresponding hours in which Nalcor has postponed the delivery of Energy pursuant to **Section 3.6**, or (b) NSPI's avoided cost associated with avoiding a requirement to generate or purchase the MWh of Energy subsequently delivered as Redeliverable Energy pursuant to **Section 3.6**, in both cases as calculated by NSPI in accordance with a methodology that is accepted at such time by the UARB as an appropriate methodology for determining NSPI's hourly incremental cost per MWh to generate or purchase Energy, taking into account, to the extent applicable in the given circumstances and without duplication, items such as transmission tariff charges and other fees incurred, fuel costs, variable capital costs, environmental compliance costs, line losses, and other variable operating costs; provided, however, that if at any time no such methodology is in use, a substitute methodology shall be agreed to by Nalcor and NSPI, or failing such agreement, the substitute methodology shall be resolved by means of a Specified Dispute. **Section 1.2(m)** applies to the foregoing provision;

"**Indemnified Party**" has the meaning set forth in **Section 12.5(a)**;

"**Indemnitor**" has the meaning set forth in **Section 12.5(a)**;

"**Initial EAA**" means the agreement dated October 20, 2013 between Nalcor, Emera and NSPI relating to the provision of access to market-priced Energy by Nalcor to NSPI;

"**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;

"**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;

"**Knowledge**" means, in the case of a given Party, the actual knowledge of any of the executive officers of such Party and other facts or matters that such executive officers could

reasonably be expected to discover or otherwise become aware of in the course of performing their ordinary responsibilities as executive officers of such Party;

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

"**Labrador-Island Link Limited Partnership**" has the meaning set forth in the NLDA;

"**Labrador Transmission Assets**" 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;

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

"**Lender Recipient**" has the meaning set forth in **Section 14.1(c)**;

"**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;

"**ML Commercial Operation Date**" has the meaning of "Commercial Operation Date" set forth in the ML-JDA;

"**MW**" means megawatt;

"**MWh**" means MW hours;

"**Maritime Link**" or "**ML**" means the transmission facilities to be constructed between the Island Interconnected System and the NS Transmission System in accordance with the Maritime Link-Joint Development Agreement;

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

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

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

"**Marketing Personnel**" means a natural Person who, individually or on behalf of any other Person, sells or purchases for consumption or resale Capacity, Energy, Energy derivatives or ancillary services in the wholesale power markets, and includes any natural Person who conducts such transactions on behalf of transmission service customers, power exchanges, transmission owners, load serving entities, loads, holders of Energy derivatives, generators and other power suppliers and their designated agents;

"**Muskrat Falls Plant**" 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;

"**NERC**" means the North American Electric Reliability Corporation or its successor organization;

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

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

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

"**NLH**" means Newfoundland and Labrador Hydro, a wholly-owned subsidiary of Nalcor, and includes its successors;

"**NPCC**" means the Northeast Power Coordinating Council or its successor organization;

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

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

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

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

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

"**NSPI Default**" has the meaning set forth in **Section 10.5**;

"**NSPI Group**" has the meaning set forth in **Section 12.1(b)**;

"**NSPI Solicitation**" has the meaning set forth in **Section 2.2**;

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

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

"**Nalcor Affiliate Assignee**" means an Affiliate of Nalcor to which all or any portion of the Nalcor Rights have been assigned in accordance with **Section 15.1**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

"**Nalcor Bid**" has the meaning set forth in **Section 2.3**;

"**Nalcor Bid Energy**" means the aggregate amount of Energy in respect of a specific Contract Year that is offered for sale by Nalcor to NSPI pursuant to **Section 2.3**;

"**Nalcor Default**" has the meaning set forth in **Section 10.1**;

"**Nalcor Forecast**" has the meaning set forth in **Section 2.1**;

"**Nalcor Generated Energy**" means Energy from all interconnected generation facilities located within NL, whether in full or partial operation, that are now or hereafter:

(a) directly or indirectly owned by or contracted to Nalcor or any Affiliate of Nalcor or its successors or assigns, or

(b) directly or indirectly operated or controlled by Nalcor or any Affiliate of Nalcor or its successors or assigns for the purpose of generating Energy to satisfy NL Native Load.

Notwithstanding the foregoing, Nalcor Generated Energy excludes (i) Energy from the Upper Churchill hydro-electric project that is required to be delivered to Hydro Quebec under existing contract, and (ii) any Energy from a facility described in paragraph (b) of this definition, to the extent that a third party is contractually entitled to, and does, dispose of such Energy for consumption other than by NL Native Load;

"**Nalcor Group**" has the meaning set forth in **Section 12.2**;

"**Nalcor Hydrology Event**" means the occurrence of actual hydrologic conditions that have resulted or will result in less Stored Energy being available to Nalcor or its Affiliates than was forecasted by Nalcor at the time it prepared the applicable Nalcor Forecast or Variance Forecast. In respect of an inability by Nalcor to bid Energy in response to a NSPI Solicitation, the applicable Nalcor Forecast or Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of such NSPI Solicitation. In respect of an inability of Nalcor to deliver Energy to NSPI, the applicable Nalcor Forecast or Variance Forecast will be the one that was provided to NSPI during the month of May preceding the issuance of the NSPI Solicitation pursuant to which the delivery obligation arose;

"**Nalcor Master Agreement**" has the meaning set forth in **Section 3.1** and is based on the Edison Electrical Institute standard form Master Power Purchase & Sale Agreement;

"**Nalcor Rights**" has the meaning set forth in **Section 15.1(a)**;

"**Nalcor Supplied Energy**" means Energy sold and delivered by Nalcor to NSPI pursuant to this Agreement. For greater certainty, Nalcor Supplied Energy includes Energy supplied in respect of any Nalcor Variance Amount and is in addition to, and separate from, the Nova Scotia Block;

"**Nalcor Variance Amount**" has the meaning set forth in **Section 5.5(a)(iii)**;

"**New Generation Development Energy**" means any Nalcor Generated Energy that is generated from a generating facility (other than the Muskrat Falls Plant) built or acquired after October 20, 2013 wholly or partially for the purposes of, and which is committed under, a contract for the supply of Energy by Nalcor or any Affiliate of Nalcor or its successors or assigns, to a customer outside of NL. For greater certainty, Energy from such a generating facility that is not committed to such a contract will not be considered New Generation Development Energy and will be included in Available Energy;

"**Newfoundland and Labrador Development Agreement**" or "**NLDA**" means the agreement dated July 31, 2012 among Nalcor, Emera and other parties relating, among other things, to the development of the Muskrat Falls Plant, the Labrador-Island Link and the Labrador Transmission Assets;

"**Notice**" means a communication required or contemplated to be given by any Party to another under this Agreement, which communication shall be given in accordance with **Section 18.1**;

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

"**Off-Peak Hours**" means the hours of a day that are not Peak Hours;

"**Off-Peak Period**" means the aggregation of all Off-Peak Hours during a given calendar month;

"**Original Date of Delivery**" means the date upon which Nalcor originally committed to deliver a specific quantity of Energy to NSPI pursuant to this Agreement prior to any postponement of such Energy delivery pursuant to **Section 3.6**;

"**PPA**" has the meaning set forth in **Section 5.7(b)(i)**;

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

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

"**Peak Period**" means the aggregation of all Peak Hours during a given calendar month;

"**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;

"**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;

"**Progress Report**" has the meaning set forth in **Section 5.1**;

"**Receiving Party**" means a Party or an Affiliate of a Party that receives Confidential Information from another Party or an Affiliate of another Party;

"**Recipient Party**" has the meaning set forth in **Section 16.2(a)**;

"**Redeliverable Energy**" means Energy in respect of which Nalcor has postponed delivery pursuant to **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 or NSPI;

"**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;

"**Repairs**" means repairs, changes, renewals, improvements or replacements;

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

"**Safety Event**" means an event which causes a Party to suspend the performance of an obligation hereunder for the purpose of safeguarding life or property by making Repairs to its facilities in accordance with Good Utility Practice;

"**Schedule**", when used as a verb, means to take all acts necessary to schedule, or cause to be scheduled, the delivery of Energy to an applicable point of delivery in accordance with this Agreement;

"**Scheduling Protocol**" means the scheduling protocol attached as **Schedule 1**;

"**Settled Forecast**" has the meaning set forth in **Section 5.1**;

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

"**Stored Energy**" means, in respect of Nalcor, the potential to generate Energy that is represented by an incremental increase in the volume of water stored in any reservoirs owned or operated by, or available to Nalcor or its Affiliates, including the reservoir associated with the hydroelectric generation facilities at Churchill Falls on the Churchill River in NL, and in respect of Emera, means the potential to generate Energy that is represented

by an incremental increase in the volume of water stored in any reservoirs owned or operated by, or available to Emera or its Affiliates;

"**Sunk Transmission**" means Nalcor's or Emera's or their respective Affiliates' long-term transmission service reservations, as the case may be, in effect prior to the applicable NSPI Solicitation;

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

"**TWh**" means terawatt hours;

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

"**Tax**" or "**Taxes**" means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

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

"**third party**" means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

"**Third Party Claim**" means a Claim referred to in **Section 12.1**, **12.2** or **12.3**;

"**Trade Secret**" means information that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy;

"**Transaction**" has the meaning set forth in the applicable EEI Master Agreement;

"**Transmission Losses**" means losses of Energy normally incurred in the transmission of Energy;

"**Transmission Rights**" means contractual rights to receive transmission service on specifically identified transmission infrastructure and transmission congestion rights;

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

"**UARB**" means the Utility and Review Board body established by NS pursuant to the *Utility and Review Board Act* (Nova Scotia);

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

"**Variance**" has the meaning set forth in **Section 5.2**;

"**Variance Forecasts**" has the meaning set forth in **Section 5.5(c)**;

"**Variance Trigger Date**" has the meaning set forth in **Section 5.2**; and

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

1.2 Construction of Agreement

(a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an "**Article**", "**Section**", "**Schedule**" or "**Appendix**" followed by a number or a letter or both refer to the specified article, section, schedule or appendix of this Agreement. The terms "**this Agreement**", "**hereof**", "**herein**", "**hereby**", "**hereunder**" and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.

(b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.

(c) "Including" - The word "including", when used in this Agreement, means "including without limitation".

(d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with US GAAP except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, Emera shall use commercially reasonable efforts to provide Nalcor with all of the information it needs to prepare Nalcor's accounting records 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 therein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.

(h) Terms Defined in Schedules - Terms defined in a Schedule or part of a Schedule to this Agreement shall, unless otherwise specified in such Schedule or part of a Schedule or elsewhere in this Agreement, have the meaning ascribed thereto only in such Schedule or such part of such Schedule.

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

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

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

(l) Approvals, etc. - Except where otherwise expressly provided herein, whenever an action referred to in this Agreement is to be "approved", "decided" or "determined" by a Party, or requires a Party's or its Representative's "consent", then (i) such approval, decision, determination or consent by a Party or its Representative must be in writing, and (ii) such Party or Representative shall be free to take such action having regard to that Party's own interests, in its sole and absolute discretion.

(m) Subsequent Agreements - Wherever a provision of this Agreement states that **Section 1.2(m)** applies, in respect of the matters referred to in that provision:

(i) each Party shall use commercially reasonable efforts to reach agreement with the other Party or Parties, as applicable, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing;

(ii) any failure, inability or refusal of a Party or Parties to reach agreement shall constitute a Dispute and may be submitted by any applicable Party for resolution pursuant to the Dispute Resolution Procedure;

(iii) such Dispute shall be resolved as a Specified Dispute if so specified in such provision; and

(iv) if such Dispute is not a Specified Dispute, the applicable Parties will be deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve the Dispute by arbitration.

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, or that of either EEI Master Agreement, the provision of the body of this Agreement shall prevail. Notwithstanding the preceding sentence, if there is any conflict or inconsistency among the provisions governing a Transaction pursuant to either EEI Master Agreement, the conflict or inconsistency will be resolved first in favour of the terms of such Transaction, then in favour of the provisions of the applicable EEI Master Agreement and lastly in favour of this Agreement.

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 16**, 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	-	Scheduling Protocol
Schedule 2	-	Nalcor Master Agreement
Schedule 3	-	Nalcor Master Agreement Modifications
Schedule 4	-	Description of Nalcor Progress Report
Schedule 5	-	Form of Balancing Service Agreement
Schedule 6	-	Form of Assignment Agreement
Schedule 7	-	Dispute Resolution Procedure

ARTICLE 2
NALCOR FORECASTS AND NSPI SOLICITATIONS

2.1 Nalcor Forecasts

(a) In accordance with the schedule set forth in **Section 2.1(b)**, Nalcor shall provide NSPI with good faith forecasts that specify the quantity of Available Energy that is forecasted to be available for sale by Nalcor to NSPI during the following 24 calendar months (each such forecast being a "**Nalcor Forecast**"). Each Nalcor Forecast will:

(i) forecast a maximum of 1.8 TWh of Available Energy in respect of any Contract Year;

(ii) forecast quantities of Available Energy that are capable of being delivered to the Delivery Point, with regard to the capability of the Transmission System and the generating facilities used to produce Nalcor Generated Energy and provided that, for the purpose of the Nalcor Forecast only, the NS Transmission System will be deemed to be capable of receiving, for consumption within NS, at least 300 MW at the Delivery Point at all applicable times, inclusive of the Nova Scotia Block and any Energy exchanged pursuant to the Balancing Services Agreement; and

(iii) for each applicable calendar month, specify the total quantities of Available Energy that are forecast to be available during Peak Hours and Off-Peak Hours.

(b) The Nalcor Forecasts shall be provided by Nalcor to NSPI as follows:

(i) the first Nalcor Forecast shall be provided on March 1 of the calendar year in which Nalcor expects that the first Contract Year will commence, acting

reasonably and in consideration of the anticipated date of Full Commercial Operation;

(ii) subsequent Nalcor Forecasts shall be provided on or before the last Business Day preceding the start of each ensuing calendar month; and

(iii) the last Nalcor Forecast shall be provided on or before the last Business Day preceding June 1, 2040.

2.2 NSPI Solicitations

By no later than June 15 preceding each Contract Year, NSPI may, at its option, issue a competitive market solicitation for the supply of Energy to it during such Contract Year (each, a "**NSPI Solicitation**"). On the date of issuance of each NSPI Solicitation, NSPI shall provide Notice to Nalcor that a NSPI Solicitation has been issued, including the particulars of how the documentation comprising the NSPI Solicitation may be accessed. The NSPI Solicitation will specify the total quantities of Energy being sought by NSPI in respect of the Peak Hours and Off-Peak Hours of each month of the Contract Year covered by the NSPI Solicitation, and will accommodate the pricing of Energy offers on the bases provided for in **Section 2.4**. The NSPI Solicitation will include all such additional details as are customary or reasonably required for the conduct of a solicitation of such nature. Nalcor and any other respondents to the NSPI Solicitation, including Emera, if applicable, will be provided with at least 30 days within which to submit their responses to NSPI. There will be only one NSPI Solicitation in respect of any Contract Year. Nothing in this Agreement shall obligate NSPI to issue a NSPI Solicitation.

2.3 Nalcor Bid

If a NSPI Solicitation requests offers for the supply of Energy during a Peak Period or an Off-Peak Period, or both, in respect of one or more calendar months in which the immediately preceding Nalcor Forecast has forecasted the availability of Available Energy, then Nalcor shall respond in good faith to such NSPI Solicitation in accordance with the following (each such response being a "**Nalcor Bid**"):

(a) Nalcor shall submit a Nalcor Bid within 30 days following its receipt of the NSPI Solicitation;

(b) the Nalcor Bid will offer to supply Energy to NSPI in respect of the Peak Period and the Off-Peak Period of each calendar month of the applicable Contract Year in quantities that are at least equal to the lesser of:

(i) the quantities of Energy requested by the NSPI Solicitation for the Peak Period and Off-Peak Period of such month; and

(ii) the quantities of Energy forecasted to be available, if any, by the most recent Nalcor Forecast for the Peak Period and the Off-Peak Period of such month;

(c) the Nalcor Bid will specify the quantities of Energy, if any, in MWh, that are being offered to NSPI for the Peak Period and the Off-Peak Period of each calendar month of the Contract Year, and will identify the prices or pricing mechanism, on a dollar per MWh basis, for specific Energy quantities during each such Peak Period and Off-Peak Period, and the pricing of all Energy offered by the Nalcor Bid shall comply with **Section 2.4**; and

(d) Nalcor's obligation to bid the Energy quantities provided for by **Sections 2.3(b)** will be reduced to the extent that Nalcor is unable to fulfil such obligation due to a Forgivable Event.

2.4 Nalcor Bid Price

In pricing the Nalcor Bid Energy offered pursuant to **Section 2.3**, Nalcor shall consider, in respect of the applicable time periods covered by the Nalcor Bid, NSPI's market alternatives for Energy procurement and Nalcor's sales opportunities in other accessible north-eastern electricity markets available to Nalcor at any time. The prices offered by Nalcor in each Nalcor Bid will be the price for the Energy delivered to the Delivery Point and will not exceed the greater of:

(a) the hourly settled Day-Ahead Price at the ISO-NE Mass Hub node (described as "4000_:_.H.INTERNAL_HUB" by the ISO-NE) for the hour of delivery. For greater certainty, this price will be the Day-Ahead Price, and will not be reduced by any real or implied market fees, Tariff Charges, Transmission Losses or other charges; and

(b) the price associated with any alternative market opportunities identifiable by Nalcor at the time of the Nalcor Bid that are available to Nalcor at any time within one year following the submission of the Nalcor Bid into the NSPI Solicitation, to the extent that Nalcor can demonstrate:

(i) a liquid trading node with associated published forward pricing;

(ii) an Available Transmission Path;

(iii) available hydraulic storage capacity, sufficient to allow Nalcor or its Affiliates to store the Energy that is subject to the pricing mechanism set forth in this **Section 2.4(b)** as Stored Energy until the time of such alternative market opportunity; and

(iv) forecasted available generation Capacity, sufficient to allow Nalcor or its Affiliates to convert the Stored Energy referred to in **Section 2.4(b)(iii)** to Energy at the time of such alternative market opportunity,

less incremental Tariff Charges, Transmission Losses and other charges that would be incurred to deliver Energy comprising Nalcor Bid Energy to such market, and for greater certainty, such price will not reflect a deduction for any costs for Sunk Transmission.

The pricing mechanisms provided for by **Sections 2.4(a)** and **(b)** will be in reference to pricing that is available for a non-firm, Energy-only product in respect of which a purchaser receives no GHG Credits. Nalcor Bids that offer pricing that is compliant with this **Section 2.4** will be deemed to be in good faith with respect to price.

2.5 Acknowledgement of NSPI Acceptance

Within 15 days following the expiry of the minimum 30 day period referred to in **Section 2.2**, NSPI shall, by Notice, either:

(a) advise Nalcor that it does not accept the Energy supply offers set out in the Nalcor Bid, or

(b) provide an acknowledgement of acceptance to Nalcor specifying the portions of the Energy offered by the Nalcor Bid that NSPI intends to accept (which, for clarity, may be the total of the Energy offered by the Nalcor Bid). Such acknowledgement will clearly identify the specific Peak Periods and Off-Peak Periods in respect of which NSPI has accepted Nalcor's Energy supply offers, the MWh quantities associated with each such period, and will provide such additional details as may reasonably be required by Nalcor given the nature of the intended transactions.

Nothing in this Agreement obligates NSPI to accept any Energy supply offer set forth in a Nalcor Bid.

2.6 Purchase and Sale Obligation

Upon the provision of an acknowledgment by NSPI to Nalcor pursuant to **Section 2.5(b)**, and subject to **Section 3.6**, Nalcor shall be obligated to sell and deliver to NSPI, and NSPI shall be obligated to purchase and receive from Nalcor, the quantities of Nalcor Bid Energy specifically accepted by NSPI's acknowledgement, provided that Nalcor's obligation to sell and deliver such Energy will be reduced to the extent that Nalcor is unable to fulfil such obligation due to a Forgivable Event.

2.7 NSPI Third Party Solicitations

Nothing in this Agreement will prevent NSPI from issuing solicitations and entering into contracts with third parties instead of, or in addition to, issuing NSPI Solicitations. In conducting any such solicitations, NSPI will not be restrained from requesting Energy from any source or with any particular characteristics. For greater certainty, Nalcor will not be obliged to respond to any such alternate solicitations and will only be required to respond to a NSPI Solicitation that is compliant with the provisions of this Agreement.

2.8 Nalcor Third Party Transactions

Nothing in this Agreement will prohibit Nalcor or any Affiliate of Nalcor from selling to a third party or otherwise disposing of any Available Energy in respect of a Contract Year that: (a) Nalcor is not required to offer to NSPI pursuant to a Nalcor Bid in accordance with **Section 2.3**, or (b)

has been the subject of such a Nalcor Bid but has not been accepted by NSPI pursuant to, and within the time-frame contemplated by, **Section 2.5**.

ARTICLE 3
PROVISIONS GOVERNING ENERGY TRANSACTIONS

3.1 Master Power Sale and Purchase Agreement

The Master Power Purchase & Sale Agreement, entered into by Nalcor and NSPI on the Effective Date and attached as **Schedule 2** (the "**Nalcor Master Agreement**"), as amended by **Schedule 3**, will govern all transactions between those Parties for the purchase, sale and delivery of Nalcor Supplied Energy in respect of which a Transaction has been entered into. Nalcor and NSPI will be deemed to have entered into a Transaction pursuant to the Nalcor Master Agreement in respect of each specific delivery of Energy at the time that such delivery is confirmed on a day-ahead basis in accordance with the Scheduling Protocol.

3.2 Purchase and Sale at the Delivery Point

Nalcor shall sell and deliver, or cause to be delivered, to NSPI, and NSPI shall purchase and receive from Nalcor, all Nalcor Supplied Energy at the Delivery Point in accordance with this Agreement, the Nalcor Master Agreement (including applicable Confirmations) and the Scheduling Protocol. Title and ownership relating to all Nalcor Supplied Energy will pass from Nalcor to NSPI at the Delivery Point.

3.3 Energy-Only Product

Nalcor Supplied Energy will be an Energy-only product, and Nalcor will retain all rights and value associated with such Energy in respect of associated Capacity and GHG Credits.

3.4 End Use Consumption Only

NSPI shall utilize all Nalcor Supplied Energy for the purpose of end-use consumption by its customers within NS only, provided that NSPI will have the limited right to resell Nalcor Supplied Energy during periods in which such Energy is surplus to NSPI's requirements due to such variations in NSPI's load or generation that are identified by NSPI subsequent to the acceptance by NSPI of an applicable Nalcor Bid pursuant to **Section 2.5(b)**. For greater certainty, Nalcor and NSPI agree that it is the intention of those Parties that NSPI will not be a market reseller of Nalcor Supplied Energy, except in the circumstances identified above.

3.5 Scheduling of Energy Deliveries

The sale and delivery by Nalcor to NSPI of Nalcor Supplied Energy pursuant to this Agreement, including any Redeliverable Energy, will be Scheduled in accordance with the Scheduling Protocol. Nalcor and NSPI shall ensure that all Energy that Nalcor is obligated to sell and that NSPI is obligated to purchase pursuant to **Section 2.6** is Scheduled and delivered in accordance with the Scheduling Protocol.

3.6 Rescheduled Delivery

Nalcor may, at its option and in its sole discretion, postpone and reschedule the delivery of Energy that it is otherwise obligated to deliver to NSPI pursuant to this Agreement in accordance with the following:

(a) prior to the day-ahead confirmation of the relevant Energy delivery pursuant to the Scheduling Protocol, Nalcor shall advise NSPI of: (i) the specified quantities of Energy in respect of which Nalcor intends to postpone delivery, and (ii) the date(s) of the applicable Original Date(s) of Delivery that are affected by the postponement. Nalcor shall provide this notification to the NSPI representative who is identified as NSPI's representative by the Nalcor Master Agreement in respect of Scheduling matters;

(b) as soon as practicable following the receipt by NSPI of the notification provided for by **Section 3.6(a)**, Nalcor and NSPI shall consult one another to determine whether a mutually-satisfactory agreement can be reached regarding the terms upon which the Redeliverable Energy will be delivered by Nalcor to NSPI pursuant to this **Section 3.6**. If Nalcor and NSPI reach such an agreement, they shall formalize it in writing and the agreement will represent binding obligations of those Parties. If no such agreement is reached, then Nalcor shall advise NSPI whether or not it intends to proceed with the postponement as set forth in the notification, and if Nalcor affirms the postponement, those Parties shall proceed in accordance with the following provisions of this **Section 3.6**;

(c) Nalcor and NSPI shall cooperate in good faith and use commercially reasonable efforts to ensure that Redeliverable Energy is Scheduled and delivered in accordance with the provisions of this **Section 3.6** and the Scheduling Protocol, provided that the total quantities of Redeliverable Energy that are provided for pursuant to **Section 3.6(d)** shall be Scheduled and delivered to NSPI by no later than the date that is 365 days following each applicable Original Date of Delivery;

(d) the Energy delivered by Nalcor to NSPI pursuant to **Section 3.6(c)** shall be delivered at times and in quantities that provide the equivalent economic value to NSPI, as would have been obtained by it had the delivery of the Redeliverable Energy not been postponed pursuant to this **Section 3.6**. Upon receipt of notification from Nalcor pursuant to **Section 3.6(a)** that it intends to proceed with a postponement, NSPI shall act diligently and use commercially reasonable efforts to replace the postponed Energy with other Energy supplies on an economic basis;

(e) in the absence of an agreement between Nalcor and NSPI pursuant to **Section 3.6(b)**, the equivalency of economic value for the purposes of **Section 3.6(d)** shall be calculated by NSPI by comparing (i) the economic value that would have been obtained by it from the postponed Energy, had it not been postponed, with (ii) the economic value actually obtained by it from the Redeliverable Energy that is subsequently delivered by Nalcor. NSPI shall calculate the economic value of (i), above, by multiplying the quantities of Energy in respect of which delivery was postponed by Nalcor by the Incremental Cost Rate associated with such postponed

Energy. NSPI shall calculate the economic value of (ii), above, by multiplying the quantities of applicable Redeliverable Energy actually delivered by Nalcor by the Incremental Cost Rate associated with such delivered Energy. Any Dispute regarding the application of this **Section 3.6(e)** or **Section 3.6(g)** will constitute a Specified Dispute to be determined pursuant to Section 6 of the Dispute Resolution Procedure;

(f) The delivery of Redeliverable Energy, once Scheduled, may not be further postponed other than in accordance with **Section 3.6(g)**;

(g) Nalcor's obligation to Schedule and deliver Redeliverable Energy may be postponed to the extent that Nalcor is unable to perform such obligations due to a Forgivable Event, provided, however, that Nalcor shall not be entitled to postpone the Scheduling and delivery of Redeliverable Energy beyond the date that is 365 days following the applicable Original Date of Delivery; and

(h) the provisions of all pre-existing contractual arrangements between Nalcor and NSPI governing the sale and delivery of Energy that has become subject to postponement pursuant to this **Section 3.6**, whether arising pursuant to this Agreement, a NSPI Solicitation, the Nalcor Master Agreement (including Transactions thereunder), or otherwise, including those related to the timing of the delivery of such Energy, will be extended or modified to the limited extent necessary to accommodate and give effect to the operation of this **Section 3.6**.

3.7 **Measurement and Metering**

The measurement and metering of Nalcor Supplied Energy will be conducted in accordance with the prevailing practices of the System Operators for NL and NS. The measurement and metering of any Energy that is sold by Emera to NSPI pursuant to this Agreement will be conducted in accordance with the prevailing practices of the System Operator for NS.

ARTICLE 4
ENERGY AVAILABILITY COMMITMENT

4.1 **Energy Availability Commitment**

(a) Except as provided for by **Sections 4.1(b)**, **5.5(a)(i)** and **5.5(a)(ii)**, Nalcor shall make available to NSPI during the Term an amount of Energy that is no less than the product of 1.2 TWh multiplied by the number of Contract Years in the Term (the "**Commitment**").

(b) For greater certainty, Nalcor's obligation in respect of the Commitment, as modified by **Sections 5.5(a)(i)** and **5.5(a)(ii)**, if applicable, will be reduced to the extent that Nalcor is unable to fulfil such obligation due to Force Majeure, and if at the end of the Term Nalcor has not fulfilled such obligation due to Force Majeure, Nalcor will have no further obligation in respect of any portion of the Commitment that was not fulfilled by reason of Force Majeure.

4.2 **Determination of Commitment Fulfilment**

For the purpose of determining the fulfilment of the Commitment by Nalcor, the amount of Energy that has been made available by Nalcor to NSPI in respect of each Contract Year will be calculated as the sum of the following, without duplication:

(a) all Nalcor Supplied Energy in such Contract Year;

(b) any Energy supplied by Nalcor or an Affiliate to NSPI during such Contract Year that is not:

(i) Energy supplied to satisfy a Nalcor Variance Amount,

(ii) other Nalcor Supplied Energy, or

(iii) Energy comprising the Nova Scotia Block;

(c) all Nalcor Bid Energy to the extent (i) such Energy is offered by Nalcor in response to a NSPI Solicitation but is not accepted by NSPI pursuant to **Section 2.5(b)** during such Contract Year and to the extent that such Energy is not otherwise supplied to NSPI as described by **Section 4.2(b)**; or (ii) such Energy is the subject of a Transaction that is confirmed on a day-ahead basis pursuant to the Scheduling Protocol, but is not delivered to NSPI by reason of a "Buyer Failure" within the meaning of Section 4.2 of the Nalcor Master Agreement;

(d) all Energy that is forecasted to be available by the Nalcor Forecast in respect of such Contract Year that exceeds the total Energy quantity sought by NSPI through a NSPI Solicitation for such Contract Year, or, if no NSPI Solicitation is issued in respect of such Contract Year, the total Energy that is forecasted to be available by the Nalcor Forecast in respect of such Contract Year, in either case to the extent that such Energy is not otherwise supplied to NSPI as described by **Section 4.2(b)**; and

(e) all Redeliverable Energy that would have been delivered in the applicable Contract Year, but for its Scheduling having been postponed into the subsequent Contract Year by operation of **Section 3.6**, provided that the amount of Energy to be attributed pursuant to this **Section 4.2(e)** will be the amount that was originally intended to be delivered in the absence of the postponement, and provided that such Energy amount will not be credited again toward the fulfillment of the Commitment in the subsequent Contract Year.

ARTICLE 5
VARIANCES

5.1 **Nalcor Progress Report**

By no later than 90 days following the end of each Contract Year other than the last Contract Year, Nalcor shall provide a progress report to NSPI and Emera on Nalcor's ability to fulfil

the Commitment (each a "**Progress Report**"). Each Progress Report will include the information specified by **Schedule 4**. NSPI and Emera will each have the right to challenge Nalcor's conclusion in any Progress Report, and if Nalcor, Emera and NSPI cannot agree on the challenged portion of the Progress Report, the matter will constitute a Specified Dispute and the challenged content of the Progress Report will be determined pursuant to Section 6 of the Dispute Resolution Procedure. Each Progress Report, as mutually-agreed upon or expertly-determined, as applicable, will be referred to as a "**Settled Forecast**".

5.2 Resolution Process

If any Settled Forecast predicts that the actual amount of Energy to be made available to NSPI over the Term will be less than the Commitment (such shortfall amount, in MWh, as adjusted annually based on each successive Settled Forecast, being a "**Variance**"), then, in respect of the Variance, Nalcor and Emera shall proceed in accordance with **Sections 5.3** to **5.9**, as applicable. The date on which a Settled Forecast that forecasts a Variance is accepted by Emera and NSPI or finally determined pursuant to a Specified Dispute pursuant to **Section 5.1** is referred to as a "**Variance Trigger Date**". Each Settled Forecast will specify the prorated portion of the Variance that is to be satisfied during the next whole Contract Year (the "**Annual Variance Amount**"). The Annual Variance Amount will be calculated as the Variance predicted by the applicable Settled Forecast divided by the number of whole Contract Years then remaining in the Term.

5.3 Negotiated Solution

Within 20 days following a determination of a Variance, Nalcor and Emera shall each appoint a senior executive, who shall together work cooperatively and in good faith over a period not to exceed three months to determine a mutually-agreeable commercially reasonable means of satisfying the Variance. If Nalcor and Emera do not agree upon a resolution that is acceptable to each of them in their sole discretion and that preserves NSPI's rights under this Agreement, then Nalcor, Emera and NSPI shall proceed pursuant to **Sections 5.4** to **5.9**, as applicable.

5.4 Effect of Variance on Nalcor Commitment Obligation

If a Variance occurs, Nalcor will remain bound to perform all of its obligations hereunder, except that in such event, the Commitment will be reduced by the cumulative Emera Variance Amounts.

5.5 Emera and Nalcor Variance Amounts

Emera and Nalcor shall be responsible for any Variance as follows:

(a) Nalcor and Emera Variance Amounts

(i) Subject to **Section 5.5(a)(ii)**, in each Contract Year following a Variance Trigger Date, Emera shall make available to NSPI, in accordance with this Agreement, an amount of Energy that is equal to the lesser of: (A) the Annual Variance Amount in respect of such Contract Year, and (B) 300 GWh. The Energy amount that Emera is required to make available to NSPI in

respect of a given Contract Year pursuant to this **Section 5.5(a)** will be referred to as the "**Emera Variance Amount**" in respect of such Contract Year.

(ii) If a subsequent Settled Forecast predicts that future Annual Variance Amounts will be reduced from the then-current Annual Variance Amount, then, notwithstanding the predicted reduction, Emera may elect to remain obliged to continue to make the associated then-current Emera Variance Amount available to NSPI in each remaining Contract Year of the Term. If Emera so elects, Nalcor's obligations to NSPI in respect of the Commitment and any applicable Nalcor Variance Amounts will be commensurately reduced. Emera shall communicate any such election to NSPI and Nalcor by Notice within 20 days following, as applicable: (A) the date of the delivery by Nalcor of the relevant Progress Report, if mutually-agreed, or (B) the date of the final conclusion of a dispute resolution process establishing such Settled Forecast.

(iii) Nalcor shall be responsible for any Annual Variance Amount in excess of each Emera Variance Amount (the "**Nalcor Variance Amount**"). In respect of each Contract Year following a Variance Trigger Date, Nalcor's obligation in respect of the Nalcor Variance Amount will be to make available to NSPI an amount of Energy, if any, by which the Annual Variance Amount exceeds the Emera Variance Amount for such Contract Year.

(b) Points of Delivery - Energy supplied to NSPI in respect of a Variance will be delivered in accordance with the following:

(i) in the case of Energy supplied in respect of an Emera Variance Amount, the point of delivery for such Energy will be, at the option of Emera, the Delivery Point or any other point on the NS Transmission System; and

(ii) in the case of Energy supplied in respect of a Nalcor Variance Amount, the point of delivery for such Energy will be the Delivery Point or such other point on the NS Transmission System as may be proposed by Nalcor and approved by NSPI.

(c) Variance Forecasts - On or before the last Business Day preceding the start of each calendar month following a Variance Trigger Date, Emera and Nalcor, if applicable, shall each provide good faith forecasts to NSPI of Energy that is forecasted to be available for delivery and sale to NSPI in amounts sufficient to satisfy Emera's and Nalcor's respective obligations under **Section 5.5(a)** during the following 24 months at the applicable points of delivery (the "**Variance Forecasts**"). The Variance Forecasts will include forecasts of the total of such available Energy in respect of the Peak Hours and Off-Peak Hours of each of the applicable 24 months. Nalcor's obligation to provide Variance Forecasts in accordance with the foregoing is in addition to its obligation to provide Nalcor Forecasts.

(d) Bids - Following a Variance Trigger Date, NSPI shall provide Notice to Emera, in addition to Nalcor, of the issuance of each NSPI Solicitation in the manner provided for by **Section 2.2**. Emera and Nalcor, if applicable, shall each bid the Energy forecasted by their most recent respective Variance Forecasts to be available during Peak Periods and Off-Peak Periods of each calendar month of the relevant Contract Year, to the extent that the NSPI Solicitation has requested offers for the supply of Energy during the Peak Periods and Off-Peak Periods during such months. The minimum 30 day period for response to the NSPI Solicitation that is referred to in **Section 2.2** and the further 15 day period within which NSPI must advise as to whether it has accepted the bid that is referred to in **Section 2.5** apply equally to any Emera bid of its Variance Forecast amounts as to the Nalcor Bid process (including in respect of any Nalcor Variance Forecast amounts). Acceptance of any such bid by NSPI will: (i) obligate the applicable Party to Schedule, sell and deliver to NSPI the Energy so accepted by NSPI, subject to the provisions of **Section 3.6**, applied *mutatis mutandis* and subject to the occurrence of Forgivable Events, and (ii) obligate NSPI to purchase and receive such Energy from that Party, in each case in accordance with the applicable EEI Master Agreement.

(e) Bid Prices - Nalcor - The pricing of bids made by Nalcor pursuant to **Section 5.5(d)** will be subject to the pricing cap set out in **Section 2.4**.

(f) Bid Prices - Emera - In pricing bids made pursuant to **Section 5.5(d)**, Emera shall consider, in respect of the applicable time periods covered by its bid, NSPI's market alternatives for Energy procurement and Emera's sales opportunities in other accessible north-eastern electricity markets available to Emera at any time. The prices offered by Emera in each such bid by Emera will be the price for the Energy delivered in accordance with **Section 5.5(b)(i)** and will not exceed the greater of:

(i) the hourly settled Day-Ahead Price at the ISO-NE Mass Hub node (described as "4000_:_.H.INTERNAL_HUB" by the ISO-NE) for the hour of delivery. For greater certainty, this price will be the Day-Ahead Price, and will not be reduced by any real or implied market fees, Tariff Charges, Transmission Losses or other charges; and

(ii) the price associated with any alternative market opportunities identifiable by Emera at the time of its bid that are available to Emera at any time within one year following the submission by Emera of its bid into the NSPI Solicitation, to the extent that Emera can demonstrate:

(A) a liquid trading node with associated published forward pricing;

(B) an Available Transmission Path;

(C) available storage capacity, sufficient to allow Emera or its Affiliates to store the Energy that is subject to the pricing mechanism set forth in this **Section 5.5(f)(ii)** until the time of such alternative market opportunity; and

(D) forecasted available generation Capacity, sufficient to allow Emera or its Affiliates to convert the stored Energy referred to in **Section 5.5(f)(ii)(C)** to Energy at the time of such alternative market opportunity,

less incremental Tariff Charges, Transmission Losses and other charges that would be incurred to deliver the Energy that is the subject of Emera's bid to such market, and for greater certainty, such price will not reflect a deduction for any costs for Sunk Transmission.

The pricing mechanisms provided for by **Sections 5.5(f)(i)** and **5.5(f)(ii)** will be in reference to an Energy product with the attributes described in **Section 5.6(a)(i)**. Emera bids that offer pricing that is compliant with this **Section 5.5(f)** will be deemed to be in good faith with respect to price.

5.6 **Commercial Terms Governing Emera Variance Amount Transactions**

(a) Emera Variance Transactions - In respect of Energy that is delivered and sold by Emera to NSPI in satisfaction of any Emera Variance Amount:

(i) such Energy will be a non-firm Energy-only product, and Emera will retain any rights and value associated with such Energy in respect of associated Capacity and GHG Credits;

(ii) NSPI shall utilize all such Energy for the purpose of end-use consumption by its customers within NS only, provided that NSPI will have the limited right to resell such Energy during periods in which such Energy is surplus to NSPI's requirements due to such variations in NSPI's load or generation that are identified by NSPI subsequent to its acceptance of the applicable Emera bid giving rise to the transaction in respect of such Energy. For greater certainty, Emera and NSPI agree that it is the intention of those Parties that NSPI will not be a market reseller of Energy supplied in respect of an Emera Variance Amount, except in the circumstances identified above; and

(iii) the sale and delivery by Emera to NSPI of Energy pursuant to this Agreement will be Scheduled on a day-ahead basis. Emera and NSPI shall cooperate in good faith and use commercially reasonable efforts to ensure that all Energy that Emera is obligated to sell and that NSPI is obligated to purchase pursuant to **Section 5.5(d)** is Scheduled and delivered in a manner generally consistent with the process set forth in the Scheduling Protocol.

(b) Emera Master Agreement

(i) By no later than 60 days following the first Variance Trigger Date, Emera and NSPI shall enter into an Edison Electrical Institute standard form Master Power Purchase & Sale Agreement, which will be based on the form of the Nalcor Master Agreement, as modified by this Agreement, with any changes

that are necessary or commercially reasonable (the "**Emera Master Agreement**"). **Section 1.2(m)** applies to this **Section 5.6(b)(i)**.

(ii) The Emera Master Agreement will govern any transactions between Emera and NSPI pursuant to this Agreement in respect of the purchase and sale of Energy other than transactions governed by a PPA pursuant to **Section 5.7(b)(i)**. Subject to the foregoing, Emera and NSPI shall enter into a Transaction pursuant to the Emera Master Agreement in respect of each Emera bid that is wholly or partially accepted by NSPI in accordance with **Section 5.5(d)**.

5.7 **Emera Wind with Nalcor Balancing Option**

(a) NSPI will have the option, but will not be obligated to, construct or contract wind generation facilities to mitigate some or all of the Variance included in the Emera Variance Amount. NSPI shall give Notice to Nalcor and Emera of its election in respect of this option within 90 days following a Variance Trigger Date. If NSPI exercises such option, Emera's obligation to make Energy available to NSPI in respect of an Emera Variance Amount will be reduced by the projected annual average Energy output of such wind generation facilities in each Contract Year following the commencement of the commercial operation of such facilities.

(b) To the extent that NSPI declines to exercise its option under **Section 5.7(a)**, Emera may, directly or through an Affiliate of Emera, exercise the same option to construct or contract wind generation facilities to satisfy some or all of Emera's obligations in respect of the Emera Variance Amounts, and in this event, the following provisions apply:

(i) if Emera and NSPI enter into a long term power purchase agreement in respect of such Energy on terms approved by the UARB (the "**PPA**"), the Emera Variance Amounts will be reduced by the amount of Energy thereby contracted for in each remaining whole Contract Year, and

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

(c) If NSPI or Emera decide to construct or contract wind generation facilities as contemplated by **Sections 5.7(a)** or **5.7(b)** to satisfy Emera's obligations in respect of the Emera Variance Amounts, then, for greater certainty, Nalcor will have no responsibility for any failure or inability of such wind generation facilities to provide or make available sufficient Energy.

5.8 **Nalcor Balancing**

In the event that one or both of Emera and NSPI exercise the options to construct or contract wind generation in accordance with **Section 5.7(a)** or **5.7(b)**, the following will apply:

(a) Nalcor shall enter into a separate balancing services agreement with each such Party that indicates its intention to do so pursuant to **Section 5.8(b)** substantially in the form attached hereto as **Schedule 5** (the "**Balancing Service Agreement**");

(b) Any balancing service agreement to be entered into pursuant to **Section 5.8(a)** shall be executed by the applicable Parties within 365 days following the provision of Notice to Nalcor by NSPI or Emera, as applicable, of the notifying Party's exercise of its option pursuant to **Section 5.7(a)** or **5.7(b)** and such Party's intention to enter into a balancing service agreement with Nalcor;

(c) the maximum aggregate balancing service that Nalcor will be obliged to provide under the agreement or agreements entered into pursuant to **Section 5.8(a)** will be 100 MW;

(d) the balancing service will be provided by Nalcor for the purpose of balancing the Energy output of the specific wind generation facilities constructed or contracted in accordance with **Section 5.7(a)** or **5.7(b)**;

(e) for greater certainty, Nalcor will continue to be obligated to make Energy available to NSPI in the amount of the Nalcor Variance Amount, if any; and

(f) for greater certainty, Energy delivered by one Party to another pursuant to the Balancing Service Agreement will not be considered to be Nalcor Generated Energy, nor to satisfy any portion of the Commitment or Nalcor's obligations in respect of any Nalcor Variance Amount, if applicable.

5.9 **Sources of Supply**

For the purposes of satisfying any obligations arising pursuant to **Section 5.5**:

(a) Emera and Nalcor each may, in its sole discretion, select whatever sources of Energy supply it deems appropriate to satisfy its respective obligations, including market purchases or new generation development

(b) a source of Energy, whether obtained by market purchases, new generation development or otherwise, need not be in NS or NL;

(c) should a Party be unable to supply such Energy from a particular source or sources for any reason, including by operation of law, the Party shall procure such Energy from such other source or sources, whether in NS, NL or elsewhere, as is necessary to satisfy its obligations under **Section 5.5**.

5.10 **Wind Generation**

All references in this **Article 5** to wind generation will be taken to include references to solar, tidal or other intermittent generation facilities in NS or adjacent waters with such changes as are required by the context.

ARTICLE 6
PERMITS, LICENCES AND APPLICABLE LAW

6.1 Licences and Compliance with Law

(a) Each Party shall be responsible for obtaining and maintaining any licences and permits as may be required for its respective performance of this Agreement.

(b) Each Party shall comply with any Applicable Law of any Authorized Authority with jurisdiction over the subject matter of this Agreement.

ARTICLE 7
CREDIT SUPPORT, PAYMENT AND AUDIT RIGHTS

7.1 Credit Assurances

The credit risk management provisions of the Nalcor Master Agreement will apply to each transaction for the sale of Nalcor Supplied Energy by Nalcor to NSPI pursuant to this Agreement. If a Variance occurs, the credit risk management provisions of the Emera Master Agreement will apply to each transaction for the sale of Energy by Emera to NSPI pursuant to this Agreement other than transactions that are governed by a PPA, if applicable.

7.2 Payment Terms Prescribed by Master Agreements

The provisions set out in Article Six ("Payment and Netting") of the Nalcor Master Agreement will govern all payments to be made pursuant to that agreement, including in respect of each transaction for the sale of Nalcor Supplied Energy by Nalcor to NSPI, and in addition will apply, *mutatis mutandis*, to any payments to be made by Nalcor to NSPI, NSPI to Nalcor, Nalcor to Emera, or Emera to Nalcor pursuant to this Agreement. If a Variance occurs, the provisions set out in Article Six ("Payment and Netting") of the Emera Master Agreement will govern all payments to be made pursuant to that agreement, including in respect of each transaction for the sale of Energy by Emera to NSPI, and in addition will apply, *mutatis mutandis*, to any payments to be made by Emera to NSPI or by NSPI to Emera pursuant to this Agreement, but for greater certainty those provisions will not apply to payments to be made in respect of transactions between Emera and NSPI that are governed by a PPA.

7.3 Record Keeping and Audit Rights

Each Party shall keep complete and accurate records and all other data required by it for the purpose of proper administration of this Agreement. All such records shall be maintained in accordance with Good Utility Practice and as required by Applicable Law. Records containing information reasonably contemplated to be useful throughout the Term shall be retained for the Term; all other documents shall be retained for at least seven years. Each Party shall provide or cause to be provided to the other Parties reasonable access to the relevant and appropriate records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Parties to comply with their obligations to Authorized Authorities, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Such records and data

will include those pertaining to Nalcor Forecasts, Nalcor's alternative market opportunities (to the extent relied on by Nalcor pursuant to **Section 2.4(b)**), the Progress Reports, the determination of the equivalency of economic value pursuant to **Section 3.6(e)**, the determination of the Incremental Cost Rate, Emera's alternative market opportunities (to the extent relied on by Emera pursuant to **Section 5.5(f)(ii)**), and quantities of Energy delivered or received at the Delivery Point or any other applicable point of delivery. Each Party may use its own employees or a mutually-agreed third party auditor for purposes of any such review of records provided that those employees or that auditor are bound by the confidentiality requirements provided for by **Article 14**. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor. This Section **7.3** will be construed in accordance with **Section 14.8**.

ARTICLE 8
TAXES

8.1 **Tax-Related Terms Prescribed by Master Agreements**

(a) Nalcor and NSPI Tax Provisions - The provisions set out in Article Nine ("Governmental Charges") of the Nalcor Master Agreement will govern the respective responsibilities and obligations of Nalcor and NSPI in relation to tax-related matters pursuant to that agreement, including in respect of each transaction for the sale of Nalcor Supplied Energy by Nalcor to NSPI, and in addition such provisions will govern, *mutatis mutandis*, the respective responsibilities and obligations of Nalcor and NSPI in relation to tax-related matters pursuant to this Agreement.

(b) Emera and NSPI Tax Provisions - The provisions set out in Article Nine ("Governmental Charges") of the Emera Master Agreement will govern the respective responsibilities and obligations of Emera and NSPI in relation to tax-related matters pursuant to that agreement, including in respect of each transaction for the sale of Energy by Emera to NSPI, and in addition such provisions will govern, *mutatis mutandis*, the respective responsibilities and obligations of Emera and NSPI in relation to tax-related matters pursuant to this Agreement, but for greater certainty those provisions will not apply to transactions between Emera and NSPI that are governed by a PPA.

ARTICLE 9
TERM AND TERMINATION

9.1 **Term**

The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall terminate in accordance with **Section 9.2**.

9.2 Termination of Agreement

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

(a) August 31, 2041, or such later date as provided for by **Section 3.6(h)**;

(b) written agreement of the Parties to terminate; and

(c) termination of the ML-JDA pursuant to Section 11.2(e) or (f) thereof, or in accordance with a court order or an arbitral award issued pursuant to the ML-JDA's dispute resolution procedure.

9.3 Effect of Termination

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

(i) each Party shall promptly return to the other Parties all respective Confidential Information of the other Parties in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Parties (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Article 14**); and

(ii) no Party shall have any obligation to the other Parties in relation to this Agreement or the termination hereof, except as set out in this **Section 9.3**.

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

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

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

(iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement; and

(iv) any other obligations that survive pursuant to **Section 18.14**.

ARTICLE 10
DEFAULT AND REMEDIES

10.1 Nalcor Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a "**Nalcor Default**"):

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

(b) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera or NSPI, as applicable, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera or NSPI, as applicable;

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

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

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

10.2 Remedies upon Nalcor Event of Default

(a) General - Upon the occurrence of a Nalcor Default and at any time thereafter, provided Emera or NSPI, as applicable, 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) Emera or NSPI, as applicable, shall be entitled to exercise all or any of its rights, remedies or recourse available to it under this Agreement, or otherwise available at law or in equity; and

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

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

(b) Losses - Subject to **Article 13**, Emera or NSPI, as applicable, may recover all Losses suffered by it that are due to a Nalcor Default, including, for the avoidance of doubt,

any costs or expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by it to recover any amounts owed to it by Nalcor under this Agreement.

10.3 Emera Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Emera under this Agreement (an "**Emera Default**"):

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

(b) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor or NSPI, as applicable, unless the cure reasonably requires a longer period and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor or NSPI, as applicable;

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

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

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

10.4 Remedies upon Emera Event of Default

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

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

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

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

(b) Losses - Subject to **Article 13**, Nalcor or NSPI, as applicable, may recover all Losses suffered by it that are due to an Emera 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 it to recover any amounts owed to it by Emera under this Agreement.

10.5 NSPI Events of Default

Except to the extent excused by a Force Majeure, the occurrence of one or more of the following events shall constitute a default by NSPI under this Agreement (a "**NSPI Default**"):

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

(b) NSPI is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 10.5(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by NSPI of Notice thereof from Nalcor or Emera, as applicable, unless the cure reasonably requires a longer period and NSPI is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor or Emera, as applicable;

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

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

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

10.6 Remedies upon NSPI Event of Default

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

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

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

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

(b) Losses - Subject to **Article 13**, Nalcor or Emera, as applicable, may recover all Losses suffered by it that are due to a NSPI 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 it to recover any amounts owed to it by NSPI under this Agreement.

10.7 Equitable Relief

Nothing in this **Article 10** shall limit or prevent a Party from seeking equitable relief including specific performance, or a declaration to enforce another Party's obligations under this Agreement.

10.8 No Cross Default

For greater certainty, this Agreement does not modify any of the obligations of the Parties pursuant to the Formal Agreements and there shall be no cross-defaults between this Agreement and the Formal Agreements.

ARTICLE 11
FORCE MAJEURE

11.1 Effect of Invoking Force Majeure and Notice

(a) If by reason of an event of Force Majeure, a Party is not reasonably able to fulfil an obligation, other than an obligation to pay or spend money, in accordance with the terms of this Agreement, then such Party shall:

(i) forthwith Notify the other Parties of such Force Majeure, or orally so notify the other Parties (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;

(ii) be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;

(iii) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;

(iv) as soon as reasonably possible after such Force Majeure, fulfil or resume fulfilling its obligations hereunder;

(v) provide the other Parties with prompt Notice of the cessation or partial cessation of such Force Majeure; and

(vi) not be responsible or liable to the other Parties for any loss or damage that the other Parties may suffer or incur as a result of such Force Majeure.

(b) Notwithstanding **Sections 11.1(a)(i)** and **18.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a duration of less than 24 hours shall be given to an operational representative of the receiving Parties. Each Party shall provide telephone and other electronic contact information to the other Parties for the purposes of this **Section 11.1(b)** prior to the start of the first Contract Year. Any Party may change such contact information from time to time by giving Notice of such change to the other Parties in accordance with **Section 18.1**.

ARTICLE 12
LIABILITY AND INDEMNITY

12.1 **Nalcor Indemnity**

Nalcor shall indemnify, defend, reimburse, release and save harmless:

(a) Emera and its Affiliates other than NSPI and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the "**Emera Group**"), and

(b) NSPI and its directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the "**NSPI Group**")

from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Emera Group or the NSPI Group, as applicable, by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Nalcor Group occurring in connection with, incidental to or resulting from Nalcor's obligations under this Agreement.

12.2 **Emera Indemnity**

Emera shall indemnify, defend, reimburse, release and save harmless:

(a) Nalcor and its Affiliates and their respective directors, officers, managers, employees, agents and representatives, and the successors and permitted assigns of each of them, (collectively, the "**Nalcor Group**"), and

(b) the NSPI Group

from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Nalcor Group or the NSPI Group, as applicable, by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the Emera Group occurring in connection with, incidental to or resulting from Emera's obligations under this Agreement.

12.3 NSPI Indemnity

NSPI shall indemnify, defend, reimburse, release and save harmless:

(a) the Nalcor Group, and

(b) the Emera Group

from and against, and as a separate and independent covenant agrees to be liable for, all Claims that may be brought against any member of the Nalcor Group or the Emera Group, as applicable, by or in favour of a third party to the proportionate extent that the Claim is based upon, in connection with, relating to or arising out of the gross negligence or wilful misconduct of any member of the NSPI Group occurring in connection with, incidental to or resulting from NSPI's obligations under this Agreement.

12.4 Own Property Damage

For the avoidance of doubt, it is the Parties' intent that, subject to any right a Party may have to seek compensation from a third party who caused the Loss or from insurance, each Party shall be responsible for and bear the risk of Losses to its own personal property, facilities, equipment, materials and improvements (including, with respect to any member of the Nalcor Group, such property of such member of the Nalcor Group, with respect to any member of the Emera Group, such property of such member of the Emera Group, and, with respect to any member of the NSPI Group, such property of such member of the NSPI Group), howsoever incurred.

12.5 Indemnification Procedure

(a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Parties and the other Persons as set forth in **Sections 12.1, 12.2 or 12.3** as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this Section.

(b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the

Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

(c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this Section at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.

(d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 12.5(h)**.

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

such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

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

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

(h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this Section shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

12.6 Insurer Approval

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

ARTICLE 13
LIMITATION OF DAMAGES

13.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 12** and this **Article 13** shall apply to any and all Claims.

13.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, or to NSPI or any other member of the NSPI Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, or to NSPI or any other member of the NSPI Group, nor shall NSPI or any member of the NSPI Group be liable to Nalcor or any other member of the Nalcor Group or to Emera or any other member of the Emera Group, for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement except that such consequential, incidental, indirect or punitive damages awarded against a member of the Nalcor Group, the Emera Group, or the NSPI Group, as the case may be, with respect to matters relating to this Agreement, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 13.2**. For the purposes of this **Section 13.2**, lost revenues or profits in relation to the purchase or sale of Energy shall not be considered to be consequential, incidental or indirect damages, provided however that a Party must still establish such lost revenues or profits in accordance with Applicable Law.

13.3 Insurance Proceeds

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

ARTICLE 14
CONFIDENTIALITY

14.1 Confidentiality and Restricted Use

(a) Subject to the terms and conditions of this Agreement, each Receiving Party shall not use the Confidential Information furnished to it by a Disclosing Party or its Representatives for any purpose other than the exercise of its rights and the performance of its obligations under this Agreement (the "**Authorized Purpose**") and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect

the Confidential Information from disclosure or misuse, which will in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

(b) The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in this **Article 14**.

(c) Except as otherwise provided by this **Article 14,** the Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a "**Lender Recipient**"), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

(i) be informed by the Receiving Party of the confidential nature of such Confidential Information; and

(ii) unless such Representative or Lender Recipient is already bound by a duty of confidentiality to the Receiving Party that is substantially similar to the obligations under this **Article 14**, be directed by the Receiving Party, and such Representative or Lender Recipient shall agree in writing, before receipt of such Confidential Information, to be bound by the obligations of, and to treat such Confidential Information in accordance with the terms and conditions of, this Agreement as if it were a Party hereto.

(d) The Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or, if so requested in writing by the Disclosing Party, destroy and certify such destruction (such certificate to be signed by an officer of the Receiving Party), all Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party or its Representatives relating to the Confidential Information of the Disclosing Party, within 30 days of a written request by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Confidential Information only for administering compliance with this Agreement or if required to retain such information for regulatory purposes, but such copies must be securely maintained and segregated from the other records of the Receiving Party.

(e) The obligations of confidentiality with respect to Confidential Information shall endure for the Term, provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the Term for such additional period as such information remains a Trade Secret.

(f) Notwithstanding the foregoing, the obligations set forth in this Agreement shall not extend to any information which:

(i) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this **Article 14** or other obligation of confidentiality;

(ii) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this **Article 14** or other obligation of confidentiality;

(iii) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;

(iv) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;

(v) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this **Article 14** or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or

(vi) is approved in writing in advance for release by the Disclosing Party.

(g) Each Party agrees that it shall ensure compliance with and be liable for any violation of this **Article 14** by that Party's Representatives and that it shall indemnify and hold harmless the other Parties and their Representatives against any Losses, costs, damages and Claims suffered or incurred by or asserted against such Parties or their Representatives flowing from such violation. This indemnity will survive termination of this Agreement.

(h) Each Receiving Party agrees that each Disclosing Party may be irreparably damaged by any unauthorized disclosure, communication or use of a Disclosing Party's Confidential Information by a Receiving Party or its Representatives and that monetary damages may not be sufficient to remedy any breach by a Receiving Party or its Representatives of any term or provision of this **Article 14** and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to any other remedy available at law or in equity.

14.2 **Acknowledgments**

Each Receiving Party acknowledges and agrees with each Disclosing Party that:

(a) subject to **Section 14.3**, the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the

Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;

(b) subject to **Section 14.3**, the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;

(c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

(d) no licence to the Receiving Party under any copyright, trademark, patent or other intellectual property right is either granted or implied by the conveying of Confidential Information to the Receiving Party.

14.3 **Reliance on Certain Confidential Information**

Notwithstanding **Sections 14.2(a)** and **14.2(b)**, a Party may rely on any Confidential Information comprising or included within each of the following for the purposes contemplated by this Agreement:

(a) Nalcor Bids or Progress Reports provided by Nalcor;

(b) Variance Forecasts provided by either Emera or Nalcor;

(c) bids made by either Emera or Nalcor pursuant to **Section 5.5(d)**;

(d) Settled Forecasts; and

(e) NSPI Solicitations.

14.4 **Disclosures Required by Law**

(a) Nalcor and its Affiliates are at all times subject to the provisions of NL legislation as such legislation may be amended or varied, including, but not limited to, the *Access to Information and Protection of Privacy Act* (NL) ("**ATIPPA**"). The Parties acknowledge that Nalcor and its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of this Agreement.

(b) Nalcor hereby acknowledges and agrees that the Confidential Information disclosed by Emera and NSPI and their Affiliates is "commercially sensitive information" as defined in the *Energy Corporation Act* (NL) and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to Emera or NSPI or their Affiliates. It is further acknowledged and agreed that Emera and NSPI have each represented to Nalcor that the Confidential Information disclosed by it and its Affiliates is treated consistently in a confidential manner by them and is customarily

not provided to their competitors. Therefore, pursuant to Section 5.4(1)(b) of the *Energy Corporation Act*, Nalcor shall refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of Newfoundland Trial Division, may occur. To the extent permitted by ATIPPA, Nalcor shall argue against disclosure, support Emera or NSPI, as applicable, in any submission concerning such Party's entitlement to be represented, and make arguments in support of non-disclosure at each step in this process.

(c) If the Receiving Party or any of its Representatives is required by Applicable Law or requested by any Person pursuant to ATIPPA, or by any Authorized Authority under any circumstances, to disclose any Confidential Information, then, subject to Applicable Law, the Receiving Party may only disclose Confidential Information if, to the extent permitted by Applicable Law, it has:

(i) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;

(ii) obtained a written legal opinion that disclosure is required;

(iii) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;

(iv) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;

(v) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and

(vi) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

(d) Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of this Agreement, provided that all relevant obligations under this **Article 14**, including **Section 14.4(c)**, have been met. For the avoidance of doubt, Nalcor and its Affiliates will have no liability to Emera or NSPI or their Affiliates for any disclosure of Confidential Information that Nalcor or any of its Affiliates is lawfully required to make pursuant to ATIPPA.

(e) In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a

Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

(i) any proceeding between Nalcor or an Affiliate of Nalcor, on the one hand, and Emera or NSPI or an Affiliate thereof, on the other hand; or

(ii) any proceeding between a Receiving Party and another Person.

In connection with the foregoing, every Receiving Party shall consent to such an order of confidentiality upon request of the relevant Disclosing Party. Any Confidential Information that is required to be disclosed but is subject to an order of confidentiality or similar order shall continue to be Confidential Information subject to protection under this Agreement.

14.5 NSPI Confidentiality Obligations

Without limiting the provisions of this Agreement:

(a) NSPI shall keep confidential from Emera, NSPI's other Affiliates and their respective Representatives: the Nalcor Forecasts, any Nalcor Variance Forecasts, all information received from Nalcor in response to a NSPI Solicitation, and all information concerning the price, quantities and timing of delivery of any Nalcor Supplied Energy purchased by NSPI pursuant to this Agreement or the Nalcor Master Agreement;

(b) NSPI shall keep the Progress Reports confidential from its Affiliates other than Emera and their respective Representatives; and

(c) NSPI shall keep confidential from its other Affiliates and their respective Representatives, and from Nalcor and its Affiliates and their respective Representatives, as applicable: the Emera Variance Forecasts, all information received from Emera in response to a NSPI Solicitation, and all information concerning the price, quantities and timing of delivery of any Energy purchased by NSPI pursuant to this Agreement or the Emera Master Agreement.

14.6 UARB Confidentiality

If NSPI is required by the UARB to disclose:

(a) information of a commercially-sensitive and confidential nature, as determined by Nalcor, that is provided by Nalcor to NSPI pursuant to this Agreement, including the Nalcor Forecasts, any Nalcor Variance Forecasts, Progress Reports, Nalcor Bids, and Nalcor's alternative market opportunities, which NSPI may be required to disclose to the UARB; or

(b) information of a commercially-sensitive and confidential nature, as determined by Emera, that is provided by Emera to NSPI pursuant to this Agreement, including Emera Variance Forecasts and Emera's alternative market opportunities,

then, NSPI shall use commercially reasonable efforts in accordance with UARB policy to ensure that such information will be filed and held on a confidential basis by the UARB and not released into the public domain.

14.7 NSPI Affiliate Transactions

NSPI may receive a request by, or directive from, the UARB to seek the production of certain books and records of Emera, and to produce such books and records to the UARB, in order for the UARB to: (a) examine the market competitiveness of this Agreement; or (b) verify that this Agreement is independent and in no way linked to agreements between Emera and third parties in a manner that causes financial harm or loss to NSPI. NSPI agrees to promptly notify Emera of any such request or requirement. Upon receipt of such notice from NSPI, Emera agrees to disclose to NSPI all relevant information relating to contracts between Emera and third parties pursuant to which Emera offers the same services, or services that are substantially similar to, the services described in this Agreement. NSPI agrees to use commercially reasonable efforts to obtain assurances from the UARB that confidential treatment will be accorded to such information that is disclosed pursuant to this **Section 14.7**.

14.8 Restrictions on Emera Access to Nalcor Confidential Information

(a) For the purposes of interpreting Emera's right to disclose Confidential Information to its Representatives as provided for by **Section 14.1(c)**, the following shall apply in relation to the disclosure by Emera of any Confidential Information contained in the Progress Reports or of any other Nalcor Confidential Information that may be obtained by Emera pursuant to this Agreement:

(i) Subject to **Section 14.8(a)(iii)**, the only individuals who will be considered to be Emera's "Representatives" are the members of its board of directors, its chief executive officer, other executive officers (other than those who have Marketing Personnel as their direct or indirect reports), internal legal counsel, Emera's external legal advisors and consultants, and, subject to **Section 14.8(a)(ii)**, such other employees of Emera and its Affiliates who the Emera CEO determines, acting reasonably, are necessary to advise Emera with respect to the Authorized Purpose;

(ii) Subject to **Section 14.1(f)** and **Section 14.8(a)(iii)**, in no event shall Emera disclose Nalcor's Confidential Information to its Marketing Personnel or to its Affiliates or their respective Representatives; and

(iii) If a Settled Forecast predicts a Variance, Emera may provide its Marketing Personnel, and any executive officers to whom its Marketing Personnel report, with the information described in Sections 4.0 and 5.0 of **Schedule 4**.

(b) If, pursuant to **Section 15.2(a)**, Emera assigns Emera Rights to Emera Energy Incorporated, a successor thereof, or another Affiliate of Emera that undertakes as a primary business activity the sale or purchase for resale of Capacity, Energy, Energy derivatives or ancillary services in the wholesale power markets, then, notwithstanding any other provision of this Agreement:

(i) Emera shall not assign to such assignee its rights to be provided with Progress Reports and to challenge Progress Reports pursuant to **Section 5.1**, and Section 2.1 of the form of Assignment Agreement entered into by the Parties to effect the assignment will reflect the reservation of such rights by Emera;

(ii) Subject to **Section 14.8(b)(iii)**, **Section 14.8(a)** will continue to govern the rights and obligations of Emera, as assignor, with respect to its handling of the Confidential Information contained in the Progress Reports; and

(iii) If a Settled Forecast predicts a Variance, Emera may provide such assignee, including its Marketing Personnel, with the information described in Sections 4.0 and 5.0 of **Schedule 4**.

14.9 **Disclosure of Agreement**

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

ARTICLE 15
ASSIGNMENT AND CHANGE OF CONTROL

15.1 **Nalcor Assignment Rights**

(a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Nalcor Rights**"), without the prior written consent of Emera and NSPI, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera and NSPI substantially in the form attached hereto as **Schedule 6**.

(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) Nalcor Master Agreement - Nalcor may only assign this Agreement in connection with a contemporaneous assignment of the Nalcor Master Agreement to an assignee receiving Nalcor's entire interest in the Nalcor Master Agreement.

(d) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor shall be deemed to be an assignment of Nalcor Rights requiring the prior written consent of Emera and NSPI pursuant to **Section 15.1(a)**, which consent may be arbitrarily withheld.

(e) Non-Permitted Assignment - Any assignment in contravention of this **Section 15.1** shall be null and void.

15.2 Emera Assignment Rights

(a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Emera Rights**") without the prior written consent of Nalcor and NSPI, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that Emera enters into an agreement with Nalcor and NSPI substantially in the form attached hereto as **Schedule 6**.

(b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.

(c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an Emera Affiliate Assignee that would result in such Emera Affiliate Assignee no longer being an Affiliate of Emera shall be deemed to be an assignment of Emera Rights requiring the prior written consent of Nalcor and NSPI pursuant to **Section 15.2(a)**, which consent may be arbitrarily withheld.

(d) Non-Permitted Assignment - Any assignment in contravention of this **Section 15.2** shall be null and void.

15.3 Assignment by NSPI

NSPI shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing without the prior written consent of Nalcor and Emera, which consent may be arbitrarily withheld. Subject to the foregoing provision of this **Section 15.3**, NSPI may only assign this Agreement in connection with a contemporaneous assignment of the Nalcor Master Agreement to an assignee receiving NSPI's entire interest in the Nalcor Master Agreement.

15.4 Assignment – Tax Requirements

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

(a) the Person is registered for HST purposes and provides the non-assigning Parties with its HST registration number in writing prior to such assignment; and

(b) if the Person has a tax residency status that is different than the tax residency status of the assigning Party, the assigning Party has obtained the prior written approval of the non-assigning Parties of the proposed assignment to the Person.

ARTICLE 16
DISPUTE RESOLUTION

16.1 General

(a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 7** (the "**Dispute Resolution Procedure**").

(b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 16**, without prejudice to any Party's rights pursuant to this Agreement.

(c) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his or her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to the resolution of future Disputes of a similar nature.

16.2 Procedure for Inter-Party Claims

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

(b) Claims Process - Following receipt of Notice of a Claim from the Claiming Party, the Recipient Party shall have 20 Business Days to make such investigation of the Claim as is considered necessary or desirable. For the purpose of such investigation, the Claiming Party shall make available to the Recipient Party the information relied upon by the Claiming Party to substantiate the Claim, together with all such other information as the Recipient Party may reasonably request. If the Claiming Party and Recipient Party agree at or prior to the expiration of such 20 Business Day period (or any mutually agreed upon extension thereof) to the validity and amount of such Claim, the Recipient Party shall immediately pay to the Claiming Party, or expressly agree with the Claiming Party to be responsible for, the full agreed upon amount of the Claim, failing which the matter will constitute a Dispute and be resolved in accordance with the Dispute Resolution Procedure.

ARTICLE 17
REPRESENTATIONS AND WARRANTIES

17.1 Nalcor Representations and Warranties

Nalcor represents and warrants to Emera and NSPI that as of the Effective Date:

(a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Nalcor and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

(d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

(e) except as disclosed by it to Emera and NSPI in writing on or before the Effective Date, there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

(f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance hereof, except for (i) such consents, approvals,

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

(g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement; and

(h) it will have good and valid title, free of all Encumbrances, to all Energy delivered by it to NSPI at the Delivery Point pursuant to this Agreement.

17.2 **Emera Representations and Warranties**

Emera represents and warrants to Nalcor and NSPI that as of the Effective Date:

(a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Emera and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

(d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

(e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

(f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a

material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals;

(g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement; and

(h) it will have good and valid title, free of all Encumbrances, to all Energy delivered by it to NSPI pursuant to this Agreement.

17.3 **NSPI Representations and Warranties**

NSPI represents and warrants to Nalcor and Emera that as of the Effective Date:

(a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of NSPI and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

(d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

(e) there are no Legal Proceedings pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

(f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the Effective Date, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; and

(g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 18
MISCELLANEOUS PROVISIONS

18.1 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

To NSPI:

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

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

18.2 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 Initial EAA). Nalcor, Emera and NSPI agree that the Initial EAA has terminated as of the Effective Date. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement.

18.3 Relationship with Formal Agreements

For greater certainty, this Agreement does not modify any of the obligations of the Parties pursuant to the Formal Agreements.

18.4 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.

18.5 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

18.6 Announcements

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

18.7 Relationship of the Parties

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

18.8 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.

18.9 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.

18.10 Time of the Essence

Time shall be of the essence.

18.11 Amendments

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

18.12 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 or Parties receiving such consent or approval.

18.13 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.

18.14 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.

18.15 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced

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

18.16 Successors and Assigns

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

18.17 Capacity of Nalcor

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

[Remainder of this page intentionally left blank.]

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

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

Name: Brad Coady, P.Eng.

NALCOR ENERGY

By: _____
Name: Chris Kieley
Title: Vice President, Strategic Planning and Business Development

By: _____
Name: Derrick Sturge
Title: Vice President, Finance and Chief Financial Officer

We have authority to bind the corporation.

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

Name: Rene Gallant

EMERA INC.

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

By:
Name: Bruce Marchand
Title: Chief Legal Officer

We have authority to bind the company.

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

Name: Rene Gallant

NOVA SCOTIA POWER INCORPORATED

By: _____
Name: Robert Hanf
Title: President and Chief Executive Officer

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

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

We have authority to bind the company.

ENERGY ACCESS AGREEMENT

SCHEDULE 1

SCHEDULING PROTOCOL

SCHEDULING PROTOCOL

SECTION 1 - INTERPRETATION

1.1 Definitions

In this Schedule, except to the extent of a conflict with a definition set out below, the definitions set forth in the Transmission Agreements apply and in addition thereto:

"**Anticipated Energy**" means quantity of Available Energy that Nalcor reasonably anticipates it will be able to make available for delivery to NSPI at the Delivery Point during a specified period of time;

"**Atlantic Prevailing Time**" or "**APT**" means the time prevailing at the time, being either Atlantic Standard Time or Atlantic Daylight Time;

"**Available Energy**" has the meaning set forth in the EAA;

"**Backstop Remedy**" means the obligations of Emera pursuant to the NBTUA:

(a) during the First Term, to purchase Energy and/or Capacity from Nalcor at the Delivery Point pursuant to Section 2.3(a) of the NBTUA;

(b) during the First Term, to purchase Energy and/or Capacity from Nalcor at the NS-NB Border and re-sell such Energy and/or Capacity to Nalcor at the NB-Maine Border pursuant to Section 2.3(b) of the NBTUA; and

(c) during the Subsequent Term, to purchase Energy from Nalcor at the Delivery Point pursuant to Section 3.2(b) of the NBTUA;

"**Bayside Rights**" has the meaning set forth in the NBTUA;

"**Calendar Week**" means each seven day period from Saturday to Friday, inclusive;

"**Dispatch Plan**" has the meaning set forth in **Section 4.1**;

"**EAA**" means the Energy Access Agreement between Nalcor, Emera and NSPI;

"**E-Tags**" means electronic tags compliant with current industry standards for the scheduling and transmission of Energy between or across electric utility company territories;

"**Equivalent Rights**" has the meaning set forth in the NBTUA or the MEPCO TRA, as the context requires;

"**First Term**" has the meaning set forth in the NBTUA;

"**MEPCO Purchase Volumes**" means the quantities of Energy and/or Capacity that Nalcor requires Emera to purchase from Nalcor during designated scheduling intervals pursuant to Section 2.5 of the MEPCO TRA;

"**MEPCO TRA**" means the MEPCO Transmission Rights Agreement between Nalcor and Emera;

"**MEPCO Transmission Rights**" has the meaning set forth in the MEPCO TRA;

"**New England**" or "**NE**" means the geographical area in which the bulk electric system is operated by ISO-NE, or its successor;

"**NBTUA**" means the New Brunswick Transmission Utilization Agreement between Nalcor and Emera;

"**Nalcor Supplied Energy**" has the meaning set forth in the EAA;

"**Nalcor Master Agreement**" has the meaning set forth in the EAA;

"**NB Nominated Transmission Quantity**" or "**NB-NTQ**" means the quantities of Energy and/or Capacity nominated by Nalcor in respect of designated scheduling intervals for transmission by Emera through the use of the Bayside Rights or the Equivalent Rights, as applicable, in accordance with the NBTUA;

"**NS-NB Border**" has the meaning set forth in the NBTUA;

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

"**NSPI Solicitation**" has the meaning set forth in the EAA;

"**NSTUA**" means the Nova Scotia Transmission Utilization Agreement between Nalcor and Emera;

"**Off-Peak Hours**" has the meaning set forth in the EAA;

"**Off-Peak Periods**" has the meaning set forth in the EAA;

"**Peak Hours**" has the meaning set forth in the EAA;

"**Peak Periods**" has the meaning set forth in the EAA;

"**Prior Day**" means:

(a) in respect of scheduling flows pursuant to the NSTUA, the MEPCO TRA, or the EAA, the day prior to the intended Energy flow; and

(b) in respect of scheduling flows pursuant to the NBTUA, the prior "Business Day" (as defined in the NBTUA) to the intended Energy flow;

"**System Operator**" means, as applicable, the Nova Scotia Power System Operator, the New Brunswick System Operator, ISO-NE or any respective successor system operator;

"**Subsequent Term**" has the meaning set forth in the NBTUA; and

"**Transaction**" has the meaning set forth in the Nalcor Master Agreement;

"**Transmission Agreements**" means the NSTUA, the NBTUA, and the MEPCO TRA.

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 a specified Section in this Schedule.

1.3 Interpretation Provisions

Section 1.2(i) and Section 1.2(j) of the Transmission Agreements and the EAA shall not apply to this Schedule.

SECTION 2 - PURPOSE AND OVERVIEW

2.1 Purpose

The purpose of this Schedule is to provide the protocol for communications between Nalcor and Emera, or Nalcor and NSPI, as applicable, that are necessary to facilitate:

(a) the scheduling of the delivery of Nalcor Supplied Energy from time to time by Nalcor to NSPI pursuant to the EAA and the Nalcor Master Agreement, including by establishing the process by which those Parties' respective obligations to deliver and receive specific quantities of Energy during the Peak Periods and Off-Peak Periods of given calendar months are ultimately translated into day-ahead delivery schedules; and

(b) the scheduling of Energy for Nalcor under the Transmission Agreements by facilitating the use by or assignment to Nalcor of Transmission Rights under the Transmission Agreements so that it may participate in electricity markets beyond NS (including those in NB and NE) by establishing the scheduling procedures by which Emera will schedule and provide transmission service in accordance with the Transmission Agreements.

2.2 Ownership of Nalcor Throughput Energy

Except as contemplated by Section 2.3(b) of the NBTUA, Nalcor will retain ownership and title to the Energy transmitted from NL through to Nalcor's final point of sale for each transaction.

2.3 E-Tags

Unless Nalcor has otherwise advised Emera, Nalcor shall be responsible for the creation of applicable E-Tags. Emera shall create applicable E-Tags if requested to do so by Nalcor.

SECTION 3 – NALCOR SUPPLIED ENERGY UNDER THE EAA

3.1 EAA Scheduling Obligations

Sections 3.2 and **3.3** apply in respect of any relevant periods during which Nalcor and NSPI have respective obligations to deliver and receive Nalcor Supplied Energy under the EAA and any applicable NSPI Solicitation.

3.2 Rolling Four Week Schedule

(a) By no later than 00:00:00 (midnight) APT of each Tuesday, Nalcor shall provide a report to NSPI in respect of the subsequent four full Calendar Weeks, advising of:

(i) for each such Calendar Week, the minimum and maximum cumulative quantities of Anticipated Energy in respect of (A) the Peak Hours of such Calendar Week, and (B) the Off-Peak Hours of such Calendar Week; and

(ii) for each hour during each such Calendar Week, the minimum and maximum Anticipated Energy.

(b) Working cooperatively and in good faith, Nalcor and NSPI shall, by no later than 00:00:00 (midnight) APT of each Wednesday, agree upon a schedule for the delivery of Nalcor Supplied Energy in each hour of the subsequent four full Calendar Weeks (each, a "**Four Week Schedule**"). Subject to the terms and conditions of the EAA and any NSPI Solicitation governing the deliveries, and provided that Nalcor remains able to deliver such Energy, at NSPI's option, the Four Week Schedule may provide for the delivery of Energy amounts up to the maximum Anticipated Energy amounts established by **Sections 3.2(a)(i)** and **3.2(a)(ii)**.

3.3 One Week Schedule

The first week of each Four Week Schedule (the "**One Week Schedule**") will establish the final delivery schedule for Nalcor Supplied Energy during each day of such week, and day-ahead schedules will be implemented accordingly pursuant to **Steps 1B(a)** and **2B** in **Section 4.1**. The One Week Schedule will only be changed by mutual agreement of Nalcor and NSPI, with each Party acting in its own interests.

3.4 Intra-Day EAA Scheduling Changes

Following the issuance by NSPI of a confirmation pursuant to **Step 2B** in **Section 4.1**, NSPI may request a change to the confirmed delivery schedule for the applicable day of delivery by providing such requests at least 60 minutes ahead of the earliest hour in respect of a change is being requested. Any resulting changes to the previously-confirmed delivery schedule will be by

mutual agreement of Nalcor and NSPI, with each Party acting in its own interests, and will be formalized by means of communication in accordance with **Section 4.2**. Unless a change to the delivery schedule is confirmed by this means, the original schedule for the applicable day will prevail. Each agreed-upon change to the delivery schedule that is so confirmed will be deemed to be an amendment to the applicable Transaction.

SECTION 4 - PROCEDURE AND STANDARD NOTIFICATION TIMELINES

4.1 Scheduling Procedures

The following scheduling procedures for daily scheduling shall apply when Nalcor Schedules the transmission of Energy pursuant to the Transmission Agreements and when Nalcor and NSPI schedule the delivery and receipt of Nalcor Supplied Energy:

Step 1A Scheduling Request - No later than 0700 APT of the Prior Day, Nalcor will provide Emera with a schedule of its transmission service requirements and the MEPCO Purchase Volumes election for all hours of the applicable day(s) in respect of each of the Transmission Agreements (the "**Dispatch Plan**") containing the following elements:

(a) in respect of the NSTUA, the requested NS-NTQ;

(b) in respect of the NBTUA:

(i) the time period and associated MW amount for which Nalcor requires an assignment of the Bayside Rights in accordance with Section 2.1(b)(i) of the NBTUA; and/or

(ii) the requested NB-NTQ;

(c) in respect of the MEPCO TRA:

(i) the time period and associated MW amount for which Nalcor requires an assignment of the MEPCO Transmission Rights in accordance with Section 2.3(a) of the MEPCO TRA; or

(ii) the requested MEPCO Purchase Volumes; and

(d) if Nalcor requires Emera to create the applicable E-Tags, a direction to Emera to create the applicable E-Tags.

Step 1B Confirmation of Nalcor Supplied Energy - By no later than 0700 APT of the Prior Day, Nalcor will:

(a) provide confirmation to NSPI of the agreed-upon hourly flows of Nalcor Supplied Energy for the following day, as established by the applicable One Week Schedule; and

(b) if it intends to exercise its right to postpone delivery of Energy pursuant to Section 3.6 of the EAA, notify NSPI of same in accordance with such provision.

Step 2A Acceptance of Dispatch Plan - By no later than 1015 APT of the Prior Day, Emera will either:

(a) accept the Dispatch Plan in full and notify Nalcor of such acceptance; or

(b) notify Nalcor that it is unable to accept the Dispatch Plan. In such notification Emera shall:

(i) advise Nalcor as to the reason for its inability to accept the Dispatch Plan, and

(ii) in respect of the NSTUA, NBTUA and MEPCO TRA, as may be applicable, advise Nalcor as to the reduced amount(s) that can be transmitted or assigned, as applicable.

Step 2B NSPI Confirmation - By no later than 1015 APT of the Prior Day, NSPI will provide confirmation to Nalcor of its acceptance of the agreed-upon hourly flows of Nalcor Supplied Energy for the following day, as established by the applicable One Week Schedule.

Step 3 Schedule Modification and Backstop Remedies - If Emera has given Nalcor notice pursuant to **Step 2A(b)**, then by no later than 1030 APT:

(a) Modified Dispatch Plan - Nalcor shall advise Emera as to whether or not to proceed with a modified Dispatch Plan. If so proceeding:

(i) the notice shall set out a modified Dispatch Plan containing the elements set forth in **Step 1A**, adjusted to address the limitations set out in **Step 2A(b)(ii)**;

(ii) if Emera has advised Nalcor pursuant to **Step 2A(b)(ii)** as to the availability of a reduced amount of the NS-NTQ, the modified Dispatch Plan shall specify either: (A) this amount, or (B) nil;

(iii) subject to any limitations set out in **Step 2A(b)(ii)**, the modified Dispatch Plan may adjust the amount(s) to be transmitted or assigned in respect of the NBTUA and MEPCO TRA; and

(iv) upon communication of the modified Dispatch Plan to Emera pursuant to this **Step 3(a)**, the modified Dispatch Plan shall be accepted by Emera and confirmation of the scheduling associated with the modified Dispatch Plan shall be communicated to Nalcor in accordance with **Step 5**.

(b) Election of Backstop Remedy - If Nalcor is entitled to a Backstop Remedy, Nalcor will provide notice to Emera as to which, if any, Backstop Remedy it will require Emera

to execute during the applicable day. Such notice will specify Nalcor's election in respect of the Backstop Remedy, as follows:

(i) Purchase at the Delivery Point pursuant to Section 2.3(a) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy and/or Capacity to be purchased by Emera at the Delivery Point;

(ii) Purchase and resale pursuant to Section 2.3(b) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy and/or Capacity to be purchased by Emera at the NS-NB Border and to be resold by Emera to Nalcor at the NB-Maine Border; or

(iii) Purchase at the Delivery Point pursuant to Section 3.2(b) of the NBTUA - an hourly dispatch plan, setting out the amount of Energy to be purchased by Emera at the Delivery Point.

Step 4 E-Tag Creation - By no later than 1030 APT of the Prior Day, Nalcor will, or, if directed by Nalcor pursuant to **Step 1A(d)**, Emera will, create the E-Tags associated with the scheduling requests contained in the Dispatch Plan and the Nalcor Supplied Energy, as confirmed by NSPI pursuant to **Step 2B**.

Step 5 Implementation of Dispatch Plan – The Energy to be transmitted through NS and NB, in respect of which Emera has accepted an original Dispatch Plan in accordance with **Step 2A(a)** or a modified Dispatch Plan in accordance with **Step 3(a)(iv)**, as applicable, shall be the "**Confirmed NS-NTQ Energy**" and the "**Confirmed NB-NTQ Energy**" respectively. Emera will by no later than 1045 APT of the Prior Day, as applicable:

(a) reserve the transmission service associated with the Confirmed NS-NTQ Energy and the Confirmed NB-NTQ Energy, as applicable, and provide Nalcor with the associated transmission reservation numbers;

(b) assign to Nalcor the Bayside Rights;

(c) assign to Nalcor the MEPCO Transmission Rights; and

(d) confirm acceptance to Nalcor of the specified MEPCO Purchase Volumes.

Step 6 Confirmation of Scheduling of Backstop Remedy - By no later than 1100 APT of the Prior Day, if Nalcor elects a Backstop Remedy pursuant to **Step 3(b)**, Emera will provide confirmation to Nalcor of the scheduling associated with the Backstop Remedy elected by Nalcor.

Step 7 Confirmation of Energy Flows - Nalcor will notify Emera and, as applicable, NSPI (in respect of Nalcor Supplied Energy) of its final scheduled Energy flows no later than 1400 APT of the Prior Day, except in the case of Energy flows destined to NE and any other markets of similar design, in which case such final scheduled Energy flows will be confirmed

immediately on notification from the applicable System Operator to market participants of accepted flows. The issuance of each such confirmation by Nalcor to NSPI will formalize a Transaction in respect of the quantities of Nalcor Supplied Energy identified in the confirmation.

4.2 Communications

Unless otherwise agreed to by the Parties, communications between the Parties in respect of **Sections 3.2**, **3.3** and **3.4** and the Steps in **Section 4.1** shall be by e-mail or on electronically recorded phone-lines.

4.3 Changes to the Energy Market

The standard notification timelines set out herein are based on the current deadlines of the applicable energy markets. Should the energy markets change their structure and/or timelines, these standard notification timelines shall be updated accordingly as the Parties may mutually agree or, failing agreement, the matter shall be resolved as a Specified Dispute. Section 1.2(m) of the Agreement applies to this **Section 4.3**.

4.4 Equivalent Rights

The Parties acknowledge that at the Effective Date of the Transmission Agreements, the exact nature of the Equivalent Rights that will be provided by Emera to Nalcor pursuant to Section 3.1 of the NBTUA during the Subsequent Term, and that may be provided pursuant to each of Section 2.1(c) of the NBTUA and Section 2.3(c) of the MEPCO TRA, is not known. Therefore, upon the provision of Equivalent Rights by Emera to Nalcor in accordance with any of the foregoing Transmission Agreement provisions, the Parties agree to amend this Scheduling Protocol in order to provide for reasonable scheduling procedures that address the scheduling requirements applicable to such Equivalent Rights. Failing agreement, the matter shall be resolved as a Specified Dispute. Section 1.2(m) of the Agreement applies to this **Section 4.4**.

4.5 Minimum Timelines

Notwithstanding that this Scheduling Protocol describes minimum timelines for the day-ahead scheduling of Transmission Rights pursuant to the Transmission Agreements, nothing herein shall prevent Nalcor from providing its scheduling requirements pursuant to the Transmission Agreements for time periods with durations of longer than one day.

4.6 Nalcor Rights Preserved

Nothing in this Scheduling Protocol affects the rights and remedies available to Nalcor in the case of an Emera Default pursuant to any of the Transmission Agreements.

ENERGY ACCESS AGREEMENT

SCHEDULE 2

NALCOR MASTER AGREEMENT

Master Power Purchase & Sale Agreement

(MC//19995223v3)

MASTER POWER PURCHASE AND SALES AGREEMENT

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MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* ("Master Agreement") is made as of the following date: April 13, 2015 ("Effective Date"). The Master Agreement, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this Master Agreement are the following:

Name "**NALCOR ENERGY**" or "Nalcor" or "Party A"

All Notices:

Street: Hydro Place, 500 Columbus Drive

P.O. Box 12400

City: St. John's, Newfoundland

Postal Code: A1B 4K7

Duns: 24-373-2281

GST Number: 837364611

Legal Notices

Attn: General Counsel and Corporate Secretary (c/o Wayne Chamberlain)

Phone: (709) 737-1443
Facsimile: (709) 737-1782

With a copy to:

Attn: General Manager, Nalcor Energy Marketing (c/o Greg Jones)
Phone: (709) 737-1246
Facsimile: (709-737-1250

Invoices:
Attn: Controller, Energy Investments (c/o Carmel Finlay)
Phone: (709) 737-4986
Facsimile: (709) 570-5927

Name "**NOVA SCOTIA POWER INCORPORATED**" or "NSPI" or "Party B"

All Notices:

Street: 1223 Lower Water Street

P.O. Box 910

City: Halifax, Nova Scotia

Postal Code: B3J 2W5

Duns: 20-443-2637
GST Number: 119314938

Legal Notices

Attn: Corporate Secretary

Phone: (902)428-6096
Facsimile: (902)428-6171

With a copy to:

Attn: GM Regulatory and Legal Services
Phone: (902)428-6258
Facsimile: (902)428-4006

Invoices:
Attn: Power Invoices & Payments, NSPI (c/o Corporate Accountant)
Phone: (902) 428-6288
Facsimile: (902) 428-7164

Scheduling:
Attn: NLH Energy Control Center
Phone: (709)737-1958
Facsimile: (709)737-1979

Payments:
Attn: Controller, Energy Investments (c/o Carmel Finlay)
Phone: (709) 737-4986
Facsimile: (709) 570-5927

Scheduling:
Attn: NS Power Desk Phone: (902) 474-2122 (Real Time)

Phone: (902) 474-7816 (Day Ahead)
Facsimile: (902) 428-7164

Payments:
Attn: Attn: Power Invoices & Payments, NSPI (c/o Corporate Accountant)
Phone: (902) 428-6288
Facsimile: (902) 428-7164

Wire Transfer: (U.S. Funds)
BNK: Bank of Nova Scotia, NY, NY
ABA: 026-002-532
TRANSIT: 34033
ACCT: 8839212

Wire Transfer: (Canadian Funds)
BNK: Bank of Nova Scotia, St. John's, NL
TRANSIT: 34033
ACCT: 0014516

Wire Transfer: (U.S. Funds)
For payments made by banks **NOT located in the USA:**
Beneficiary: Nova Scotia Power Inc.
Beneficiary Address: 1223 Lower Water Street, Halifax, N.S. B3J 3S8
Account Number: 33993 85029 19
Beneficiary Bank:
The Bank of Nova Scotia
Halifax Business Service Centre
5251 Duke Street, Ste 700
Halifax, NS B3J 1P3
Transit: 33993 – 002
Swift Code: NOSCCATT

For payments made by banks **which are located in the USA:**
Beneficiary: Nova Scotia Power Inc.
Beneficiary Address: 1223 Lower Water Street, Halifax, N.S. B3J 3S8
Account Number: 33993 85029 19
Beneficiary Bank:
The Bank of Nova Scotia
Halifax Business Service Centre
C/O International Banking Division
44 King St. West
Toronto, ON M5H 1H1
Transit: 33993 – 002
Swift Code: NOSCCATT

Wire Transfer: (Canadian Funds)

Beneficiary: Nova Scotia Power Inc.
Beneficiary Address: 1223 Lower Water Street, Halifax, N.S. B3J 3S8
Account Number: 70003 00001 16
Beneficiary Bank: The Bank of Nova Scotia
Halifax Business Centre

	5251 Duke Street, Ste 700 Halifax, N.S. B3J 1P3 **Transit: 33993 – 002** **Swift Code: NOSCCATTHFX**
Credit and Collections: Attn: Controller, Energy Investments (c/o Carmel Finlay) Phone: (709)737-4986 Facsimile: (709)570-5927	**Credit and Collections:** Attn: Credit Group, Enterprise Risk Management, Emera Phone: (902) 474-2115 or (902) 428-6788 Email: credit.group@nspower.ca
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Treasury & Risk Management (c/o Andrew Sinnott) Phone: (709) 778-6652 Facsimile: (709)737-1901	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Corporate Secretary Phone: 902-428-6096 Fax: (902) 428-6171 With a copy to: Attn: Enterprise Risk Management, Emera Phone: (902) 474-2115 or (902) 474-7866 Email: credit.group@nspower.ca

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff Tariff N/A Dated _____ Docket Number _____

Party B Tariff Tariff N/A Dated _____ Docket Number _____

Article Two

Transaction Terms and Conditions

[x] Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive

[] Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

[x] Cross Default for Party A:

[] Party A:_____ Cross Default Amount : USD $50 Million

[] Other Entity:

[x] Cross Default for Party B:

[] Party B: Cross Default Amount : USD $50 Million

[] Other Entity:

5.6 Closeout Setoff

[] Option A (Applicable if no other selection is made.)

[x] Option B – Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: Section 5.6 Closeout Setoff is amended by deleting the phrase "or any of its Affiliates" after the phrase "the Defaulting Party" in both the fourth and sixth lines of this subsection.

[] Option C (No Setoff)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify:
[X] Option C Specify: Following reasonable written demand, Party B shall deliver (i) when available, a copy of its audited consolidated financial statements for such

fiscal year and (ii) when available, a copy of its or its Guarantor's quarterly report; if such requested document is not available on the World Wide Web at www.nspower.ca, www.sedar.com or any successor or applicable website. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles ("GAAP") or, when implemented in Canada, international financial reporting standards ("IFRS").

(b) Credit Assurances:

[] Not Applicable
[x] Applicable

(c) Collateral Threshold:

[] Not Applicable
[x] Applicable

If applicable, complete the following:

Party B Collateral Threshold: The amount set forth below opposite the classification that is one classification higher than that applicable to the lowest Credit Rating of Party B; provided, however, that Party B's Collateral Threshold shall be Zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

S & P Credit Rating	Moody's Credit Rating	DBRS Credit Rating	Collateral Threshold
AA and above	Aa2 and above	AA and above	$25,000,000
AA-	Aa3	AA Low	$22,500,000
A+	A1	A (high)	$15,000,000
A	A2	A	$12,500,000
A-	A3	A (low)	$10,000,000
BBB+	Baa1	BBB (high)	$7,500,000
BBB	Baa2	BBB	$5,000,000
BBB-	Baa3	BBB (low)	$2,500,000
BB+ and below	Ba1 and below	BB (high) and below	Zero

Party B Independent Amount:

Party B Rounding Amount: USD $10,000

(d) Downgrade Event:

[] Not Applicable
[x] Applicable

If applicable, complete the following:

[x] It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P, Baa3 from Moody's or BBB (Low) from DBRS or if Party B is not rated by at least one of S&P, Moody's or DBRS.

[] Other:

(e) Guarantor for Party B: N/A

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

[] Option A
[] Option B Specify:
[x] Option C Specify: Following reasonable written demand, Party A shall deliver (i) when available, a copy of its audited consolidated financial statements for such fiscal year and (ii) when available, a copy of its quarterly report; if such requested document is not available on the World Wide Web at www.nalcorenergy.com or any successor or applicable website. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles ("GAAP") or, when implemented in Canada, international financial reporting standards ("IFRS").

(b) Credit Assurances:

[] Not Applicable
[x] Applicable

(c) Collateral Threshold:

[x] Not Applicable
[] Applicable

If applicable, complete the following:

Party A Collateral Threshold: $_____; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

Party A Independent Amount:

Party A Rounding Amount: USD$_____

(d) Downgrade Event:

[x] Not Applicable
[ ] Applicable

If applicable, complete the following:

[ ] It shall be a Downgrade Event for Party A if Party A's or Party A's Guarantor, as applicable, Credit Rating falls below BBB- from S&P, Baa3 from Moody's or BBB(Low) from DBRS or if Party A is not rated by at least one of S&P, Moody's or DBRS.

[] Other:
Specify:_____

(e) Guarantor for Party A: N/A

Guarantee Amount: USD$ N/A

Article Ten

Confidentiality

[X] Confidentiality Applicable If not checked, inapplicable.

Schedule M

[] Party A is a Governmental Entity or Public Power System
[] Party B is a Governmental Entity or Public Power System
[] Add Section 3.6. If not checked, inapplicable
[] Add Section 8.6. If not checked, inapplicable

Other Changes Specify, if any:

Numbered Sections of the Master Agreement shall be amended as described below or replaced by the following like numbered sections, or where no corresponding section exists in the Master Agreement, the following sections shall be considered additions to the Master Agreement:

ARTICLE ONE: GENERAL DEFINITIONS

Add, amend or replace the following definitions, as applicable, as follows:

1.3 "Bankrupt" – is amended by adding the phrase, "which is not demonstrated to be without merit and is not vacated within three (3) Business Days" after the words, "commenced against it" in subsection (i).

1.4 "Business Day" – means any day except a Saturday, Sunday, or a statutory holiday in St. John's, Newfoundland and Labrador or Halifax, Nova Scotia on which Canadian chartered banks are not open for business.

1.8 "Claims" – is amended by adding the word, "reasonable" before "attorneys' fees" on the third line; and adding, "acting reasonably" after the words "settlement or otherwise" on the fourth line.

1.10 "Contract Price" – means the agreed price in the agreed currency (which shall be in $USD unless otherwise specified) for the purchase and sale of the Product pursuant to a Transaction.

1.12 "Credit Rating" - means, with respect to any entity, the lowest of the ratings then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or any issuer or corporate rating by S&P, Moody's, DBRS or any other rating agency agreed by the Parties from time to time.

1.22 "FERC" – The corresponding "FERC" definition is deleted.

1.26 "Interest Rate" – add "(i) for U.S. currency amounts" after the words, "for any date" in the first line; and add to the end of the definition, "and (ii) for Canadian currency amounts, the lesser of (a) per annum rate of interest equal to the prime lending rate as may from time to time be charged by the Canadian Imperial Bank of Commerce, in Toronto, or its successor, to its most credit-worthy customers on the last banking day of calendar month covered by the invoice, plus two percent (2%) per annum; or (b) the maximum rate permitted by law. "

1.27 "Letter(s) of Credit" – add after the words, "U.S commercial bank", the words, "Schedule I Canadian Chartered Bank".

1.31 "NERC Business Day" – The corresponding "NERC Business Day" definition is deleted.

1.45 "Performance Assurance" – is amended by adding the words, "acting reasonably" after "Requesting Party".

1.50 "Recording" – reference to "Section 2.4" shall be replaced by reference to "Section 2.5".

1.51 "Replacement Price" – add the words "for delivery" immediately before the phrase "at the Delivery Point" in the second line and replace the words "or at Buyer's option" on the fifth line of the definition with the words: "or, absent a purchase".

1.53 "Sales Price" – add the words "for delivery" immediately before the phrase "at the Delivery Point" in the second line, replace the words "or at Seller's option" on the fifth line: with the words: " or, absent a sale" and insert the words "provided, however, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0)" after the words ""commercially reasonable manner" in the sixth line.

1.56 "Settlement Amount" – delete the words "U.S. Dollars" in the second line and replace them with the words: "the currency of such Transaction".

1.62 "DBRS" – means Dominion Bond Ratings Service or its successor.

1.63 "GST" – means Goods and Services Tax imposed pursuant to the Excise Tax Act (Canada) as amended, restated, replaced, re-enacted or otherwise modified from time to time and includes Harmonized Sales Tax and also including any similar tax imposed by a province such as Quebec.

1.64 "Letter of Credit Default" shall mean, with respect to any outstanding Letter of Credit, that a party ("Y") fails to maintain any outstanding Letter of Credit when required by a party ("X") to do so in accordance with this Agreement, including, without limitation, as a result of the occurrence of any of the following events:

(i) the issuer of a Letter of Credit:

(a) fails to comply with or perform its obligations under such Letter of Credit;
(b) disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity or enforceability of, such Letter of Credit;
(c) becomes Bankrupt; or
(d) fails to maintain the Credit Rating set out herein;

(ii) a Letter of Credit terminates or fails or ceases to be in full force and effect, without the prior written permission of X, at any time until 10 days beyond the final payment date of the transactions for which it was issued, without having been replaced by another Performance Assurance suitable to X;

(iii) Y fails to renew any outstanding Letter of Credit at least thirty (30) days prior to its expiry, without having been replaced by another form of Performance Assurance suitable to X;

Provided, however, that no Letter of Credit Default shall occur in any event with respect to any outstanding Letter of Credit after the time such Letter of Credit is permitted or required to be expired, cancelled or returned to Y in accordance with the terms of this Master Agreement.

1.65 "Energy Access Agreement" or "EAA" – means the Energy Access Agreement of April 13, 2015 between Nalcor, NSPI and Emera Inc.

1.66 "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.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.4 Additional Confirmation Terms – remove the words "either orally or" on the seventh line immediately after the words "unless agreed to", add the words "and upon execution" immediately after the words "in writing", and replace the word "the" before the word "Parties" on the seventh line with the word "both".

2.5 Recording – on the first line remove the words: "Unless a party expressly objects to a Recording (defined below) at the beginning of a telephone conversation," begin the resulting sentence with "Each" and add the words ", provided that such Recording would be admissible in accordance with the applicable law of such proceeding or action, provided, further, the parties agree not to contest or assert any defense to the validity or enforceability of Transactions entered into pursuant to this Master Agreement solely under laws relating to whether certain agreements are to be in writing or signed by the party to be thereby bound" after the words "Master Agreement" at the end.

ARTICLE THREE: OBLIGATIONS AND DELIVERY

3.3 "Force Majeure" – Delete the words ", in whole or part," from line 2. Insert "to such extent" between "shall" and "be" in line 4. In line 7, replace "remedy" with "attempt to overcome the effects of" - and add the words "; provided, however, nothing contained herein shall be construed to require a Claiming Party to settle any strike or

labor dispute." after the words "with all reasonable dispatch" on the seventh and eight lines and add the words "The Claiming Party shall provide the non-claiming Party notice of the Claiming Party's best estimate of the duration of the Force Majeure." as the last sentence in this Section.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 "Seller Failure." – on line 2, insert ", by Section 3.3," immediately after the word "Product" and capitalize the first letter of the word "schedule" wherever it is used in the section and immediately after "and/or deliver" add "or cause to be delivered" and immediately after "Seller shall pay Buyer" add "as liquidated damages and not as a penalty" and immediately after "calculation of such amount" on the last line, add the words "and the origin of the values used in said calculation which must be derived from a commercially reasonable source".

4.2 "Buyer Failure." – on line 2, insert ", by Section 3.3," immediately after the word "Product" and capitalize the first letter of the word "schedule" wherever it is used in the section and immediately after "and/or receive" add "or cause to be received" and immediately after "Buyer shall pay Seller" add "as liquidated damages and not as a penalty" and immediately after "calculation of such amount" on the last line, add the words "and the origin of the values used in said calculation which must be derived from a commercially reasonable source".

4.3 "Duty to Mitigate" – The following provision is added as a new Section 4.3: "Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of the Agreement."

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES.

5.1(a) "Events of Default" – the phrase "three (3) Business Days" is changed to "five (5) Business Days".

5.1(b) "Events of Default" – the word "intentionally" is added before "false or misleading"; and "misleading" is followed by "or willfully blind.

5.1(g) "Events of Default" – the phrase "or becoming capable at such time of being declared," on the eighth line of the Section shall be deleted. Add the phrase "(after giving effect to any applicable notice requirement or grace period)" after the words "occurrence and continuation" on the second line. Add the following provision after the words " (as specified in the Cover Sheet") at the end of the Section 5.1(g): "provided, an Event of Default shall not occur under this Section 5.1(g) if, as demonstrated to the reasonable satisfaction of the other Party, the Event of Default or the failure to pay is the result of a failure to pay caused by an error or omission of an administrative or operational nature, funds were available to such Party to enable it to make the relevant payment when due, and such relevant payment is made within three (3) Business Days following receipt of written notice from the party to whom the payment is owed."

5.1(i) "Events of Default" - The following provision is added as a new Section 5.1(i):

> "(i) a Letter of Credit Default occurs with respect to such Party without being cured by the end of the second Business Day after such occurrence."

5.2 "Declaration of an Early Termination Date and Calculation of Settlement Amounts" - is amended by: (1) in the fifth line, deleting the words "an early termination" and replacing them with the word "a", and (2) adding the following as new third and fourth sentences: "The remedy provided for by this Section 5.2 shall be in addition to any other legal or equitable remedies to which the Non-Defaulting Party may be entitled. For the avoidance of doubt, and notwithstanding the references in this Master Agreement to "Early Termination Date" and like terms, this Article Five will not be construed as entitling the Non-Defaulting Party to terminate this Master Agreement if an Event of Default has occurred."

5.4 "Notice of Payment of Termination Payment" - is amended by adding the following as a new last sentence of the section:

"Notwithstanding any provision to the contrary contained in this Agreement, however, the obligations of the Non-Defaulting Party to pay any amount to the Defaulting Party under this Article 5 shall not arise, and the Non-Defaulting Party shall not be required to pay the Defaulting Party any amount under this Article 5 unless and until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or its Affiliate under this Agreement or any other agreement have been fully and finally satisfied and performed."

5.7 Suspension of Performance. – In subsection (i) delete "NERC" and replace "early" with "Early".

5.8 Additional Rights on Default. - The following provision is added as a new Section 5.8:

"5.8 Without limitation to any other rights or remedies under this Agreement or otherwise, if an Event of Default has occurred and is continuing, the Non-Defaulting Party shall also be entitled to take any or all of the following actions without prior Notice to the Defaulting Party: (i) draw on or apply any Performance Assurance or other collateral to satisfy the obligations of the Defaulting Party to the Non-Defaulting Party with respect to any Settlement Amount; (ii) exercise all rights and remedies available to a secured party under the personal property legislation or uniform commercial code of any applicable jurisdiction; (iii) liquidate, free from any claim or right of the Defaulting Party, any Performance Assurance or other collateral, and apply the proceeds thereof to the obligations of the Defaulting Party to the Non-Defaulting Party with respect to any Settlement Amount, in such manner as it sees fit in its sole discretion; (iv) net against or deduct from any Settlement Amount owed by the Non-Defaulting Party to the Defaulting Party any Performance Assurance or other collateral held by the Defaulting Party; and/or (v) set off and net against or deduct from any Settlement Amount owed by the Non-Defaulting Party to the Defaulting Party any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Non-Defaulting Party and the Defaulting Party.

Amounts that are setoff or netted against, deducted from, or applied to, obligations under this Section may be converted by the Non-Defaulting Party into any currency in which any obligation owed is denominated at the rate of exchange at which the Non-Defaulting Party, acting in a reasonable manner and in good faith, would be able to purchase the relevant amount of the currency being converted.

Each of the parties represents and acknowledges that the rights set forth in this Section are an integral part of this Agreement between the parties and that without such rights the parties would not be willing to enter into the Agreement. Each of the parties further acknowledges that it is entering into the Agreement on behalf of itself as principal."

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.3 Grant of Security Interest/Remedies. Section 8.3 is deleted and replaced with the following provision:

To the extent a Party delivers (each such delivering party, a "Pledgor") Performance Assurance hereunder in the form of cash or cash equivalent to the other Party (each such other Party, a "Secured Party"), such Pledgor hereby grants, pledges and assigns to such Secured Party, as security for the payment

and performance of such Pledgor's obligations owing to the Secured Party under this Agreement, a present and continuing security interest in, and lien on (and right of setoff against), all such cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and such Plegor agrees to take such action as such Secured Party reasonably requires in order to perfect such Secured Party's security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party that is a Secured Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party that is a Pledgor in the possession of the Non-Defaulting Party that is a Secured Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Non-Defaulting Party that is a Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party that is a Pledgor, including any equity or right of purchase or redemption by the Defaulting Party that is a Pledgor . The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under this Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return to the Pledgor any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.2 Governmental Charges. – In the first sentence replace "Seller shall pay or cause to be paid all taxes" with "Seller shall pay or cause to be paid, or reimburse Buyer if Buyer has paid, all taxes". In the second sentence replace "Buyer shall pay or cause to be paid" with "Buyer shall pay or cause to be paid, or reimburse Seller if Seller has paid,"

9.3 GST. – The Contract Price to be paid hereunder does not include any GST payable by Buyer in respect of Product delivered hereunder. If any GST is payable in connection with Product purchased hereunder, such GST shall be paid by Buyer to Seller, , and Seller shall remit such GST as required by law. If any GST is payable in connection with payments to be made either under this Agreement or in connection with a breach hereof, the Party obligated to make the payment shall also pay the GST to the Party entitled to receive the payment, and the recipient shall remit such GST to the Crown. All of the rules of this clause shall also be applicable to all other refundable taxes, or any similar taxes or replacement value added tax.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement – Immediately after the words "provided, however, that" in the third line, insert the words: "this Master Agreement shall not be terminated by either Party while the Energy Access Agreement is in force and effect and, provided further that".

10.2 Representations and Warranties – Immediately after the words "On the Effective Date and the date of entering into each Transaction" insert the words: "and at all times until the termination of this Agreement".

10.2(vi) Representations and Warranties – is deleted and replaced with the following: "except as otherwise disclosed by it in writing to the other Party on or prior to the Effective Date, there is not pending or, to its knowledge, threatened against it any legal proceedings that could materially adversely affect its ability to perform

its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3)."

10.2 (ix) Representations and Warranties – is deleted.

10.2(xiii) Representations and Warranties – is added as follows: "the sale of electric energy or capacity by either party to the other pursuant to this Agreement is not otherwise subject to a particular rate schedule or Tariff unless specifically stated herein."

10.5 Assignment – Section 10.5 is deleted and replaced with the following provision:

"10.5 Assignment.

(a) The provisions of this Section 10.5(a) shall apply at all times during which the Energy Access Agreement is in force and effect, as follows:

(i) Party A shall not be entitled to assign all or any portion of its interest in this Master Agreement, any claim or any other agreement relating to any of the foregoing (collectively, the "Party A Rights"), without the prior written consent of Party B, which consent may be arbitrarily withheld, except that, at any time and from time to time, Party A, without such consent, shall be entitled to assign all or any portion of its interest in the Party A Rights to an Affiliate or Affiliates of Party A, provided that Party A enters into an agreement with Party B in respect of such assignment that is substantially in the form attached to the EAA as Schedule 6.

(ii) No assignment may be made of all or any portion of the Party A Rights by Party A unless Party A 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 Party A Rights.

(iii) A change in the direct or indirect shareholders of or shareholdings in an assignee that has received assignment this Master Agreement pursuant to Section 10.5(a)(i) that would result in such assignee no longer being an Affiliate of Party A shall be deemed to be an assignment of Party A Rights requiring the prior written consent of Party B pursuant to Section 10.5(a)(i), which consent may be arbitrarily withheld.

(iv) Party B shall not be entitled to assign all or any portion of its interest in this Master Agreement, any claim or any other agreement relating to any of the foregoing without the prior written consent of Party A, which consent may be arbitrarily withheld.

(v) A Party may only assign this Master Agreement in connection with a contemporaneous assignment of the Energy Access Agreement to an assignee receiving the Party's entire interest in the EAA.

(vi) Any assignment in contravention of this Section 10.5(a) shall be null and void.

(b) The provisions of this Section 10.5(b) shall apply following any termination or expiry of the Energy Access Agreement, as follows:

(i) Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request."

10.6 Governing Law – Section 10.6 is amended by changing the words "State of New York" to "Province of Ontario" on the fourth line.

10.7 Notices – Section 10.7 is amended by deleting the references to "United States" in the third and seventh lines and replacing them with "Canadian".

10.10 Eligible Financial Contract – Section 10.10 is deleted and replaced with the following:

"This Agreement, including all Transactions under this Agreement and any Performance Assurance or other designated collateral, credit support or margin agreement or similar arrangement and any guarantee thereof, as applicable, each and together constitute an "eligible financial contract" under and in all proceedings related to the *Bankruptcy Insolvency Act* (Canada), the *Companies' Creditors Arrangement Act* (Canada) or the *Winding-up and Restructuring Act* (Canada) (in any case, as amended, restated, replaced or re-enacted from time to time) and will be treated similarly under and in all proceedings related to any bankruptcy, insolvency or similar law (regardless of the jurisdiction of application or competence of such law) or any ruling, order, directive or pronouncement made pursuant thereto.

The Parties further acknowledge and agree that each of them is a "forward contract merchant" for purposes of the Bankruptcy Code with respect to all Transactions, and that all provisions of the Bankruptcy Code pertaining to "forward contract merchants", including without limitation, Sections 362(b)(6), 546(e) and 556, shall be applicable to the Parties. The Parties further acknowledge and agree that: (i) all payments made or to be made by one Party to the other Party under or pursuant to this Agreement constitute "settlement payments" within the meaning of the Bankruptcy Code; (ii) all transfers of Performance Assurance by one Party to the other Party under this Agreement constitute "margin payments" within the meaning of the Bankruptcy Code; and (iii) without limitation, each Party's rights under Sections 5.2 and 5.3 of this

Agreement constitute a "contractual right to liquidate" the Transactions within the meaning of the Bankruptcy Code."

10.11 Confidentiality – Section 10.11 is deleted and replaced with the following:

"If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement or the completed Cover Sheet or any annex to this Master Agreement to a third party (other than the Party's or the Party's Affiliates' employees, lenders, counsel, accountants or advisors who have a need to know such information and who the party is satisfied will keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory or request by a regulatory authority proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Provided however, it shall not be deemed a breach hereunder if a Party discloses the terms and conditions of a Transaction, including the name of and any other identifying information relating to the other Party, to an entity that aggregates and reports such data to the public in the form of an index."

10.13 Notice Period – The following provision is added as a new Section 10.13:

"10.13 Where this Agreement refers to a number of days between events, this is intended to be clear days such that the length of time between them shall exclude the day on which notice is given."

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

NALCOR ENERGY

By: _____

Name: Chris Kieley

Title: Vice President Strategic Planning & Business Development

By: _____

Name: Derrick Sturge

Title: VP, Finance & CFO

NOVA SCOTIA POWER INCORPORATED

By: _____

Name: Wayne O'Connor

Title: Executive Vice President, Operations

By: _____

Name: Mark Sidebottom

Title: Vice President, Power Generation and Delivery

DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its use, or any damages resulting therefrom. By providing this Agreement EEI and NEM do not offer legal advice and all users are urged to consult their own legal counsel to ensure that their commercial objectives will be achieved and their legal interests are adequately protected.

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NALCOR ENERGY	NOVA SCOTIA POWER INCORPORATED
By: _____	By: Wayne O'Connor
Name: _____	Name: Wayne O'Connor
Title: _____	Title: Executive Vice President, Operations
By: _____	By: _____
Name: _____	Name: Mark Sidebottom
Title: _____	Title: Vice President, Power Generation and Delivery

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GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.2 "Agreement" has the meaning set forth in the Cover Sheet.

1.3 "Bankrupt" means with respect to any entity, such entity (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.4 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.5 "Buyer" means the Party to a Transaction that is obligated to purchase and receive, or cause to be received, the Product, as specified in the Transaction.

1.6 "Call Option" means an Option entitling, but not obligating, the Option Buyer to purchase and receive the Product from the Option Seller at a price equal to the Strike Price for the Delivery Period for which the Option may be exercised, all as specified in the Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to sell and deliver the Product for the Delivery Period for which the Option has been exercised.

1.7 "Claiming Party" has the meaning set forth in Section 3.3.

1.8 "Claims" means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.9 "Confirmation" has the meaning set forth in Section 2.3.

1.10 "Contract Price" means the price in $U.S. (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Transaction.

1.11 "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of a Transaction.

1.12 "Credit Rating" means, with respect to any entity, the rating then assigned to such entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issues rating by S&P, Moody's or any other rating agency agreed by the Parties as set forth in the Cover Sheet.

1.13 "Cross Default Amount" means the cross default amount, if any, set forth in the Cover Sheet for a Party.

1.14 "Defaulting Party" has the meaning set forth in Section 5.1.

1.15 "Delivery Period" means the period of delivery for a Transaction, as specified in the Transaction.

1.16 "Delivery Point" means the point at which the Product will be delivered and received, as specified in the Transaction.

1.17 "Downgrade Event" has the meaning set forth on the Cover Sheet.

1.18 "Early Termination Date" has the meaning set forth in Section 5.2.

1.19 "Effective Date" has the meaning set forth on the Cover Sheet.

1.20 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.21 "Event of Default" has the meaning set forth in Section 5.1.

1.22 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.23 "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations under one or more Transactions, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (i) the loss of Buyer's markets; (ii) Buyer's inability economically

to use or resell the Product purchased hereunder; (iii) the loss or failure of Seller's supply; or (iv) Seller's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred. The applicability of Force Majeure to the Transaction is governed by the terms of the Products and Related Definitions contained in Schedule P.

1.24 "Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.25 "Guarantor" means, with respect to a Party, the guarantor, if any, specified for such Party on the Cover Sheet.

1.26 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

1.27 "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.28 "Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of a Terminated Transaction, determined in a commercially reasonable manner.

1.29 "Master Agreement" has the meaning set forth on the Cover Sheet.

1.30 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.31 "NERC Business Day" means any day except a Saturday, Sunday or a holiday as defined by the North American Electric Reliability Council or any successor organization thereto. A NERC Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

1.32 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.33 "Offsetting Transactions" mean any two or more outstanding Transactions, having the same or overlapping Delivery Period(s), Delivery Point and payment date, where under one or more of such Transactions, one Party is the Seller, and under the other such Transaction(s), the same Party is the Buyer.

1.34 "Option" means the right but not the obligation to purchase or sell a Product as specified in a Transaction.

1.35 "Option Buyer" means the Party specified in a Transaction as the purchaser of an option, as defined in Schedule P.

1.36 "Option Seller" means the Party specified in a Transaction as the seller of an option, as defined in Schedule P.

1.37 "Party A Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party A.

1.38 "Party B Collateral Threshold" means the collateral threshold, if any, set forth in the Cover Sheet for Party B.

1.39 "Party A Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party A.

1.40 "Party B Independent Amount" means the amount , if any, set forth in the Cover Sheet for Party B.

1.41 "Party A Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party A.

1.42 "Party B Rounding Amount" means the amount, if any, set forth in the Cover Sheet for Party B.

1.43 "Party A Tariff" means the tariff, if any, specified in the Cover Sheet for Party A.

1.44 "Party B Tariff" means the tariff, if any, specified in the Cover Sheet for Party B.

1.45 "Performance Assurance" means collateral in the form of either cash, Letter(s) of Credit, or other security acceptable to the Requesting Party.

1.46 "Potential Event of Default" means an event which, with notice or passage of time or both, would constitute an Event of Default.

1.47 "Product" means electric capacity, energy or other product(s) related thereto as specified in a Transaction by reference to a Product listed in Schedule P hereto or as otherwise specified by the Parties in the Transaction.

1.48 "Put Option" means an Option entitling, but not obligating, the Option Buyer to sell and deliver the Product to the Option Seller at a price equal to the Strike Price for the Delivery Period for which the option may be exercised, all as specified in a Transaction. Upon proper exercise of the Option by the Option Buyer, the Option Seller will be obligated to purchase and receive the Product.

1.49 "Quantity" means that quantity of the Product that Seller agrees to make available or sell and deliver, or cause to be delivered, to Buyer, and that Buyer agrees to purchase and receive, or cause to be received, from Seller as specified in the Transaction.

1.50 "Recording" has the meaning set forth in Section 2.4.

1.51 "Replacement Price" means the price at which Buyer, acting in a commercially reasonable manner, purchases at the Delivery Point a replacement for any Product specified in a Transaction but not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Product and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point, or at Buyer's option, the market price at the Delivery Point for such Product not delivered as determined by Buyer in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller's liability. For the purposes of this definition, Buyer shall be considered to have purchased replacement Product to the extent Buyer shall have entered into one or more arrangements in a commercially reasonable manner whereby Buyer repurchases its obligation to sell and deliver the Product to another party at the Delivery Point.

1.52 "S&P" means the Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) or its successor.

1.53 "Sales Price" means the price at which Seller, acting in a commercially reasonable manner, resells at the Delivery Point any Product not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Product to the third party purchasers, or at Seller's option, the market price at the Delivery Point for such Product not received as determined by Seller in a commercially reasonable manner; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer's liability. For purposes of this definition, Seller shall be considered to have resold such Product to the extent Seller shall have entered into one or more arrangements in a commercially reasonable manner whereby Seller repurchases its obligation to purchase and receive the Product from another party at the Delivery Point.

1.54 "Schedule" or "Scheduling" means the actions of Seller, Buyer and/or their designated representatives, including each Party's Transmission Providers, if applicable, of notifying, requesting and confirming to each other the quantity and type of Product to be delivered on any given day or days during the Delivery Period at a specified Delivery Point.

1.55 "Seller" means the Party to a Transaction that is obligated to sell and deliver, or cause to be delivered, the Product, as specified in the Transaction.

1.56 "Settlement Amount" means, with respect to a Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such party incurs as a result of the liquidation of a Terminated Transaction pursuant to Section 5.2.

1.57 "Strike Price" means the price to be paid for the purchase of the Product pursuant to an Option.

1.58 "Terminated Transaction" has the meaning set forth in Section 5.2.

1.59 "Termination Payment" has the meaning set forth in Section 5.3.

1.60 "Transaction" means a particular transaction agreed to by the Parties relating to the sale and purchase of a Product pursuant to this Master Agreement.

1.61 "Transmission Provider" means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point in a particular Transaction.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

2.1 Transactions. A Transaction shall be entered into upon agreement of the Parties orally or, if expressly required by either Party with respect to a particular Transaction, in writing, including an electronic means of communication. Each Party agrees not to contest, or assert any defense to, the validity or enforceability of the Transaction entered into in accordance with this Master Agreement (i) based on any law requiring agreements to be in writing or to be signed by the parties, or (ii) based on any lack of authority of the Party or any lack of authority of any employee of the Party to enter into a Transaction.

2.2 Governing Terms. Unless otherwise specifically agreed, each Transaction between the Parties shall be governed by this Master Agreement. This Master Agreement (including all exhibits, schedules and any written supplements hereto), , the Party A Tariff, if any, and the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmations accepted in accordance with Section 2.3) shall form a single integrated agreement between the Parties. Any inconsistency between any terms of this Master Agreement and any terms of the Transaction shall be resolved in favor of the terms of such Transaction.

2.3 Confirmation. Seller may confirm a Transaction by forwarding to Buyer by facsimile within three (3) Business Days after the Transaction is entered into a confirmation ("Confirmation") substantially in the form of Exhibit A. If Buyer objects to any term(s) of such Confirmation, Buyer shall notify Seller in writing of such objections within two (2) Business Days of Buyer's receipt thereof, failing which Buyer shall be deemed to have accepted the terms as sent. If Seller fails to send a Confirmation within three (3) Business Days after the Transaction is entered into, a Confirmation substantially in the form of Exhibit A, may be forwarded by Buyer to Seller. If Seller objects to any term(s) of such Confirmation, Seller shall notify Buyer of such objections within two (2) Business Days of Seller's receipt thereof, failing

which Seller shall be deemed to have accepted the terms as sent. If Seller and Buyer each send a Confirmation and neither Party objects to the other Party's Confirmation within two (2) Business Days of receipt, Seller's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation, unless (i) Seller's Confirmation was sent more than three (3) Business Days after the Transaction was entered into and (ii) Buyer's Confirmation was sent prior to Seller's Confirmation, in which case Buyer's Confirmation shall be deemed to be accepted and shall be the controlling Confirmation. Failure by either Party to send or either Party to return an executed Confirmation or any objection by either Party shall not invalidate the Transaction agreed to by the Parties.

2.4 Additional Confirmation Terms. If the Parties have elected on the Cover Sheet to make this Section 2.4 applicable to this Master Agreement, when a Confirmation contains provisions, other than those provisions relating to the commercial terms of the Transaction (e.g., price or special transmission conditions), which modify or supplement the general terms and conditions of this Master Agreement (e.g., arbitration provisions or additional representations and warranties), such provisions shall not be deemed to be accepted pursuant to Section 2.3 unless agreed to either orally or in writing by the Parties; provided that the foregoing shall not invalidate any Transaction agreed to by the Parties.

2.5 Recording. Unless a Party expressly objects to a Recording (defined below) at the beginning of a telephone conversation, each Party consents to the creation of a tape or electronic recording ("Recording") of all telephone conversations between the Parties to this Master Agreement, and that any such Recordings will be retained in confidence, secured from improper access, and may be submitted in evidence in any proceeding or action relating to this Agreement. Each Party waives any further notice of such monitoring or recording, and agrees to notify its officers and employees of such monitoring or recording and to obtain any necessary consent of such officers and employees. The Recording, and the terms and conditions described therein, if admissible, shall be the controlling evidence for the Parties' agreement with respect to a particular Transaction in the event a Confirmation is not fully executed (or deemed accepted) by both Parties. Upon full execution (or deemed acceptance) of a Confirmation, such Confirmation shall control in the event of any conflict with the terms of a Recording, or in the event of any conflict with the terms of this Master Agreement.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations. With respect to each Transaction, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Quantity of the Product at the Delivery Point, and Buyer shall pay Seller the Contract Price; provided, however, with respect to Options, the obligations set forth in the preceding sentence shall only arise if the Option Buyer exercises its Option in accordance with its terms. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product or its receipt at and from the Delivery Point.

3.2 Transmission and Scheduling. Seller shall arrange and be responsible for transmission service to the Delivery Point and shall Schedule or arrange for Scheduling services

with its Transmission Providers, as specified by the Parties in the Transaction, or in the absence thereof, in accordance with the practice of the Transmission Providers, to deliver the Product to the Delivery Point. Buyer shall arrange and be responsible for transmission service at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point.

3.3 Force Majeure. To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under the Transaction and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of the Product specify otherwise, the Claiming Party shall be excused from the performance of its obligations with respect to such Transaction (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure). The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

4.1 Seller Failure. If Seller fails to schedule and/or deliver all or part of the Product pursuant to a Transaction, and such failure is not excused under the terms of the Product or by Buyer's failure to perform, then Seller shall pay Buyer, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

4.2 Buyer Failure. If Buyer fails to schedule and/or receive all or part of the Product pursuant to a Transaction and such failure is not excused under the terms of the Product or by Seller's failure to perform, then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred or, if "Accelerated Payment of Damages" is specified on the Cover Sheet, within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default. An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within three (3) Business Days after written notice;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article Four) if such failure is not remedied within three (3) Business Days after written notice;

(d) such Party becomes Bankrupt;

(e) the failure of such Party to satisfy the creditworthiness/collateral requirements agreed to pursuant to Article Eight hereof;

(f) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;

(g) if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming, or becoming capable at such time of being declared, immediately due and payable or (ii) a default by such Party or any other party specified in the Cover Sheet for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet);

(h) with respect to such Party's Guarantor, if any:

(i) if any representation or warranty made by a Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated;

(ii) the failure of a Guarantor to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice;

(iii) a Guarantor becomes Bankrupt;

(iv) the failure of a Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of such Party under each Transaction to which such guaranty shall relate without the written consent of the other Party; or

(v) a Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any guaranty.

5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party") shall have the right (i) to designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") to accelerate all amounts owing between the Parties and to liquidate and terminate all, but not less than all, Transactions (each referred to as a "Terminated Transaction") between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable).

5.3 Net Out of Settlement Amounts. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (a) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Non-Defaulting Party pursuant to Article Eight, plus any or all other amounts due to the Defaulting Party under this Agreement against (b) all Settlement Amounts that are due to the Non-Defaulting Party, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment. As soon as practicable after a liquidation, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within two (2) Business Days after such notice is effective.

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer Performance Assurance to the Non-Defaulting Party in an amount equal to the Termination Payment.

5.6 Closeout Setoffs.

Option A: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option B: After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to (i) set off against such Termination Payment any amounts due and owing by the Defaulting Party or any of its Affiliates to the Non-Defaulting Party or any of its Affiliates under any other agreements, instruments or undertakings between the Defaulting Party or any of its Affiliates and the Non-Defaulting Party or any of its Affiliates and/or (ii) to the extent the Transactions are not yet liquidated in accordance with Section 5.2, withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Section shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

Option C: Neither Option A nor B shall apply.

5.7 Suspension of Performance. Notwithstanding any other provision of this Master Agreement, if (a) an Event of Default or (b) a Potential Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under any or all Transactions; provided, however, in no event shall any such suspension continue for longer than ten (10) NERC Business Days with respect to any single Transaction unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE SIX: PAYMENT AND NETTING

6.1 Billing Period. Unless otherwise specifically agreed upon by the Parties in a Transaction, the calendar month shall be the standard period for all payments under this Agreement (other than Termination Payments and, if "Accelerated Payment of Damages" is specified by the Parties in the Cover Sheet, payments pursuant to Section 4.1 or 4.2 and Option premium payments pursuant to Section 6.7). As soon as practicable after the end of each month,

each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding month.

6.2 Timeliness of Payment. Unless otherwise agreed by the Parties in a Transaction, all invoices under this Master Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

6.3 Disputes and Adjustments of Invoices. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.3 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.

6.4 Netting of Payments. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all Transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Master Agreement, including any related damages calculated pursuant to Article Four (unless one of the Parties elects to accelerate payment of such amounts as permitted by Article Four), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

6.5 Payment Obligation Absent Netting. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article Four, interest, and payments or credits, that Party shall pay such sum in full when due.

6.6 Security. Unless the Party benefiting from Performance Assurance or a guaranty notifies the other Party in writing, and except in connection with a liquidation and termination in accordance with Article Five, all amounts netted pursuant to this Article Six shall not take into account or include any Performance Assurance or guaranty which may be in effect to secure a Party's performance under this Agreement.

6.7 Payment for Options. The premium amount for the purchase of an Option shall be paid within two (2) Business Days of receipt of an invoice from the Option Seller. Upon exercise of an Option, payment for the Product underlying such Option shall be due in accordance with Section 6.1.

6.8 Transaction Netting. If the Parties enter into one or more Transactions, which in conjunction with one or more other outstanding Transactions, constitute Offsetting Transactions, then all such Offsetting Transactions may by agreement of the Parties, be netted into a single Transaction under which:

(a) the Party obligated to deliver the greater amount of Energy will deliver the difference between the total amount it is obligated to deliver and the total amount to be delivered to it under the Offsetting Transactions, and

(b) the Party owing the greater aggregate payment will pay the net difference owed between the Parties.

Each single Transaction resulting under this Section shall be deemed part of the single, indivisible contractual arrangement between the parties, and once such resulting Transaction occurs, outstanding obligations under the Offsetting Transactions which are satisfied by such offset shall terminate.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR

OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Party A Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.1(a) is specified on the Cover Sheet, Section 8.1(a) Option C shall apply exclusively. If none of Sections 8.1(b), 8.1(c) or 8.1(d) are specified on the Cover Sheet, Section 8.1(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party B's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Party B's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Party B diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party A, Party B shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party A may request from Party B the information specified in the Cover Sheet.

(b) Credit Assurances. If Party A has reasonable grounds to believe that Party B's creditworthiness or performance under this Agreement has become unsatisfactory, Party A will provide Party B with written notice requesting Performance Assurance in an amount determined by Party A in a commercially reasonable manner. Upon receipt of such notice Party B shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party A. In the event that Party B fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party A plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold, then Party A, on any Business Day, may request that Party B provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party B's Independent Amount, if any, exceeds the Party B Collateral Threshold (rounding upwards for any fractional amount to the next Party B Rounding Amount) ("Party B Performance Assurance"), less any Party B Performance Assurance already posted with Party A. Such Party B Performance Assurance shall be delivered to Party A within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party B, at its sole cost, may request that such Party B Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party B's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party B Rounding Amount). In the event that Party B fails to provide Party B Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.1(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party A as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party B to Party A, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party B, then Party A may require Party B to provide Performance Assurance in an amount determined by Party A in a commercially reasonable manner. In the event Party B shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party A within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party A will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party B shall deliver to Party A, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party A.

8.2 Party B Credit Protection. The applicable credit and collateral requirements shall be as specified on the Cover Sheet. If no option in Section 8.2(a) is specified on the Cover Sheet, Section 8.2(a) Option C shall apply exclusively. If none of Sections 8.2(b), 8.2(c) or 8.2(d) are specified on the Cover Sheet, Section 8.2(b) shall apply exclusively.

(a) Financial Information. Option A: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of Party A's annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

Option B: If requested by Party B, Party A shall deliver (i) within 120 days following the end of each fiscal year, a copy of the annual report containing audited consolidated financial statements for such fiscal year for the party(s) specified on the Cover Sheet and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of quarterly report containing unaudited consolidated financial statements for such fiscal quarter for the party(s) specified on the Cover Sheet. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with generally accepted accounting principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the relevant entity diligently pursues the preparation, certification and delivery of the statements.

Option C: Party B may request from Party A the information specified in the Cover Sheet.

(b) Credit Assurances. If Party B has reasonable grounds to believe that Party A's creditworthiness or performance under this Agreement has become unsatisfactory, Party B will provide Party A with written notice requesting Performance Assurance in an amount determined by Party B in a commercially reasonable manner. Upon receipt of such notice Party A shall have three (3) Business Days to remedy the situation by providing such Performance Assurance to Party B. In the event that Party A fails to provide such Performance Assurance, or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default under Article Five will be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(c) Collateral Threshold. If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to Party B plus Party A's Independent Amount, if any, exceeds the Party A Collateral Threshold, then Party B, on any Business Day, may request that Party A provide Performance Assurance in an amount equal to the amount by which the Termination Payment plus Party A's Independent Amount, if any, exceeds the Party A Collateral

Threshold (rounding upwards for any fractional amount to the next Party A Rounding Amount) ("Party A Performance Assurance"), less any Party A Performance Assurance already posted with Party B. Such Party A Performance Assurance shall be delivered to Party B within three (3) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), Party A, at its sole cost, may request that such Party A Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment plus Party A's Independent Amount, if any, (rounding upwards for any fractional amount to the next Party A Rounding Amount). In the event that Party A fails to provide Party A Performance Assurance pursuant to the terms of this Article Eight within three (3) Business Days, then an Event of Default under Article Five shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

For purposes of this Section 8.2(c), the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by Party B as if all outstanding Transactions had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Party A to Party B, whether or not such amounts are due, for performance already provided pursuant to any and all Transactions.

(d) Downgrade Event. If at any time there shall occur a Downgrade Event in respect of Party A, then Party B may require Party A to provide Performance Assurance in an amount determined by Party B in a commercially reasonable manner. In the event Party A shall fail to provide such Performance Assurance or a guaranty or other credit assurance acceptable to Party B within three (3) Business Days of receipt of notice, then an Event of Default shall be deemed to have occurred and Party B will be entitled to the remedies set forth in Article Five of this Master Agreement.

(e) If specified on the Cover Sheet, Party A shall deliver to Party B, prior to or concurrently with the execution and delivery of this Master Agreement a guarantee in an amount not less than the Guarantee Amount specified on the Cover Sheet and in a form reasonably acceptable to Party B.

8.3 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent either or both Parties deliver Performance Assurance hereunder, each Party (a "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, such Secured Party, and each Party agrees to take such action as the other Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, the Non-Defaulting Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Defaulting Party in the possession of the Non-Defaulting Party or its agent; (iii) draw on any outstanding

Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of the Defaulting Party, including any equity or right of purchase or redemption by the Defaulting Party. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under the Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Master Agreement in accordance with the intent of the parties to minimize all taxes , so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any government authority("Governmental Charges") on or with respect to the Product or a Transaction arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or a Transaction at and from the Delivery Point (other than ad valorem, franchise or income taxes which are related to the sale of the Product and are, therefore, the responsibility of the Seller). In the event Seller is required by law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under Article 6 of this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE TEN: MISCELLANEOUS

10.1 Term of Master Agreement. The term of this Master Agreement shall commence on the Effective Date and shall remain in effect until terminated by either Party upon (thirty) 30 days' prior written notice; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Master Agreement that by its terms survives any such termination and, provided further, that this Master Agreement and any other documents executed and delivered hereunder shall remain in effect with respect to the Transaction(s) entered into prior to the effective date of such termination until both Parties have fulfilled all of their obligations with respect to such Transaction(s), or such Transaction(s) that have been terminated under Section 5.2 of this Agreement.

10.2 Representations and Warranties. On the Effective Date and the date of entering into each Transaction, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to legally perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(iii) the execution, delivery and performance of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(iv) this Master Agreement, each Transaction (including any Confirmation accepted in accordance with Section 2.3), and each other document executed and delivered in accordance with this Master Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses.

(v) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vi) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(vii) no Event of Default or Potential Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(viii) it is acting for its own account, has made its own independent decision to enter into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) and as to whether this Master Agreement and each such Transaction (including any Confirmation accepted in accordance with Section 2.3) is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3);

(ix) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

(x) it has entered into this Master Agreement and each Transaction (including any Confirmation accepted in accordance with Section 2.3) in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in the Transaction to which it is a Party;

(xi) with respect to each Transaction (including any Confirmation accepted in accordance with Section 2.3) involving the purchase or sale of a Product or an Option, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into such Transaction for purposes related to its business as such; and

(xii) the material economic terms of each Transaction are subject to individual negotiation by the Parties.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Quantity of the Product free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

10.4 Indemnity. Each Party shall indemnify, defend and hold harmless the other Party from and against any Claims arising from or out of any event, circumstance, act or incident first occurring or existing during the period when control and title to Product is vested in such Party as provided in Section 10.3. Each Party shall indemnify, defend and hold harmless the other Party against any Governmental Charges for which such Party is responsible under Article Nine.

10.5 Assignment. Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent may be withheld in the exercise of its sole discretion; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

10.6 Governing Law. THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

10.7 Notices. All notices, requests, statements or payments shall be made as specified in the Cover Sheet. Notices (other than scheduling requests) shall, unless otherwise specified herein, be in writing and may be delivered by hand delivery, United States mail, overnight courier service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight United States mail or courier shall be effective on the next Business Day after it was sent. A Party may change its addresses by providing notice of same in accordance herewith.

10.8 General. This Master Agreement (including the exhibits, schedules and any written supplements hereto), the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any Confirmation accepted in accordance with Section 2.3) constitute the entire agreement between the Parties relating to the subject matter. Notwithstanding the foregoing, any collateral, credit support or margin agreement or similar arrangement between the Parties shall, upon designation by the Parties, be deemed part of this Agreement and shall be incorporated herein by reference. This Agreement shall be considered for all purposes as prepared through the joint efforts of the parties and shall not be construed against one party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Master Agreement shall be enforceable unless reduced to writing and executed by both Parties. Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect outstanding Transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties. The term "including" when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation. The headings used herein are for convenience and reference purposes only. All indemnity and audit rights shall survive the termination of this Agreement for twelve (12) months. This Agreement shall be binding on each Party's successors and permitted assigns.

10.9 Audit. Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Master Agreement. If requested, a Party shall provide to the other Party statements evidencing the Quantity delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be

made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.10 Forward Contract. The Parties acknowledge and agree that all Transactions constitute "forward contracts" within the meaning of the United States Bankruptcy Code.

10.11 Confidentiality. If the Parties have elected on the Cover Sheet to make this Section 10.11 applicable to this Master Agreement, neither Party shall disclose the terms or conditions of a Transaction under this Master Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

SCHEDULE M

(THIS SCHEDULE IS INCLUDED IF THE APPROPRIATE BOX ON THE COVER SHEET IS MARKED INDICATING A PARTY IS A GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM)

A. The Parties agree to add the following definitions in Article One.

"Act" means _____.[1]

"Governmental Entity or Public Power System" means a municipality, county, governmental board, public power authority, public utility district, joint action agency, or other similar political subdivision or public entity of the United States, one or more States or territories or any combination thereof.

"Special Fund" means a fund or account of the Governmental Entity or Public Power System set aside and or pledged to satisfy the Public Power System's obligations hereunder out of which amounts shall be paid to satisfy all of the Public Power System's obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of "Force Majeure" in Article One.

If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity.

C. The Parties agree to add the following representations and warranties to Section 10.2:

Further and with respect to a Party that is a Governmental Entity or Public Power System, such Governmental Entity or Public Power System represents and warrants to the other Party continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and the Public Power System's ordinances, bylaws or other regulations, (ii) all persons making up the governing body of Governmental Entity or Public Power System are the duly elected or appointed incumbents in their positions and hold such

[1] Cite the state enabling and other relevant statutes applicable to Governmental Entity or Public Power System.

positions in good standing in accordance with the Act and other applicable law, (iii) entry into and performance of this Master Agreement by Governmental Entity or Public Power System are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) the Public Power System's obligations to make payments hereunder are unsubordinated obligations and such payments are (a) operating and maintenance costs (or similar designation) which enjoy first priority of payment at all times under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law or (b) otherwise not subject to any prior claim under any and all bond ordinances or indentures to which it is a party, the Act and all other relevant constitutional, organic or other governing documents and applicable law and are available without limitation or deduction to satisfy all Governmental Entity or Public Power System' obligations hereunder and under each Transaction or (c) are to be made solely from a Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by the Governmental Entity or Public Power System will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Governmental Entity or Public Power System otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Governmental Entity or Public Power System or create any kind of lien on, or security interest in, any property or revenues of Governmental Entity or Public Power System which, in either case, is proscribed by any provision of the Act or any other relevant constitutional, organic or other governing documents and applicable law, any order or judgment of any court or other agency of government applicable to it or its assets, or any contractual restriction binding on or affecting it or any of its assets.

D. The Parties agree to add the following sections to Article Three:

Section 3.4 Public Power System's Deliveries. On the Effective Date and as a condition to the obligations of the other Party under this Agreement, Governmental Entity or Public Power System shall provide the other Party hereto (i) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Governmental Entity or Public Power System of this Master Agreement and (ii) an opinion of counsel for Governmental Entity or Public Power System, in form and substance reasonably satisfactory to the Other Party, regarding the validity, binding effect and enforceability of this Master Agreement against Governmental Entity or Public Power System in

respect of the Act and all other relevant constitutional organic or other governing documents and applicable law.

Section 3.5 No Immunity Claim. Governmental Entity or Public Power System warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (a) suit, (b) jurisdiction of court (including a court located outside the jurisdiction of its organization), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment.

E. If the appropriate box is checked on the Cover Sheet, as an alternative to selecting one of the options under Section 8.3, the Parties agree to add the following section to Article Three:

Section 3.6 Governmental Entity or Public Power System Security. With respect to each Transaction, Governmental Entity or Public Power System shall either (i) have created and set aside a Special Fund or (ii) upon execution of this Master Agreement and prior to the commencement of each subsequent fiscal year of Governmental Entity or Public Power System during any Delivery Period, have obtained all necessary budgetary approvals and certifications for payment of all of its obligations under this Master Agreement for such fiscal year; any breach of this provision shall be deemed to have arisen during a fiscal period of Governmental Entity or Public Power System for which budgetary approval or certification of its obligations under this Master Agreement is in effect and, notwithstanding anything to the contrary in Article Four, an Early Termination Date shall automatically and without further notice occur hereunder as of such date wherein Governmental Entity or Public Power System shall be treated as the Defaulting Party. Governmental Entity or Public Power System shall have allocated to the Special Fund or its general funds a revenue base that is adequate to cover Public Power System's payment obligations hereunder throughout the entire Delivery Period.

F. If the appropriate box is checked on the Cover Sheet, the Parties agree to add the following section to Article Eight:

Section 8.4 Governmental Security. As security for payment and performance of Public Power System's obligations hereunder, Public Power System hereby pledges, sets over, assigns and grants to the other Party a security interest in all of Public Power System's right, title and interest in and to [specify collateral].

G. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

NOTWITHSTANDING THE FOREGOING, IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF _____[2] SHALL APPLY.

[2] Insert relevant state for Governmental Entity or Public Power System.

SCHEDULE P: PRODUCTS AND RELATED DEFINITIONS

"Ancillary Services" means any of the services identified by a Transmission Provider in its transmission tariff as "ancillary services" including, but not limited to, regulation and frequency response, energy imbalance, operating reserve-spinning and operating reserve-supplemental, as may be specified in the Transaction.

"Capacity" has the meaning specified in the Transaction.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in megawatt hours.

"Firm (LD)" means, with respect to a Transaction, that either Party shall be relieved of its obligations to sell and deliver or purchase and receive without liability only to the extent that, and for the period during which, such performance is prevented by Force Majeure. In the absence of Force Majeure, the Party to which performance is owed shall be entitled to receive from the Party which failed to deliver/receive an amount determined pursuant to Article Four.

"Firm Transmission Contingent - Contract Path" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product in the case of the Seller from the generation source to the Delivery Point or in the case of the Buyer from the Delivery Point to the ultimate sink, and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This contingency shall excuse performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary.

"Firm Transmission Contingent - Delivery Point" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission to the Delivery Point (in the case of Seller) or from the Delivery Point (in the case of Buyer) for such Transaction is interrupted or curtailed and (i) such Party has provided for firm transmission with the transmission provider(s) for the Product, in the case of the Seller, to be delivered to the Delivery Point or, in the case of Buyer, to be received at the Delivery Point and (ii) such interruption or curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the applicable transmission provider's tariff. This transmission contingency excuses performance for the duration of the interruption or curtailment, notwithstanding the provisions of the definition of "Force Majeure" in Section 1.23 to the contrary. Interruptions or curtailments of transmission other than the transmission either immediately to or from the Delivery Point shall not excuse performance

"Firm (No Force Majeure)" means, with respect to a Transaction, that if either Party fails to perform its obligation to sell and deliver or purchase and receive the Product, the Party to which performance is owed shall be entitled to receive from the Party which failed to perform an

amount determined pursuant to Article Four. Force Majeure shall not excuse performance of a Firm (No Force Majeure) Transaction.

"Into _____ (the "Receiving Transmission Provider"), Seller's Daily Choice" means that, in accordance with the provisions set forth below, (1) the Product shall be scheduled and delivered to an interconnection or interface ("Interface") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which Interface, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area; and (2) Seller has the right on a daily prescheduled basis to designate the Interface where the Product shall be delivered. An "Into" Product shall be subject to the following provisions:

1. Prescheduling and Notification. Subject to the provisions of Section 6, not later than the prescheduling deadline of 11:00 a.m. CPT on the Business Day before the next delivery day or as otherwise agreed to by Buyer and Seller, Seller shall notify Buyer ("Seller's Notification") of Seller's immediate upstream counterparty and the Interface (the "Designated Interface") where Seller shall deliver the Product for the next delivery day, and Buyer shall notify Seller of Buyer's immediate downstream counterparty.

2. Availability of "Firm Transmission" to Buyer at Designated Interface; "Timely Request for Transmission." "ADI" and "Available Transmission." In determining availability to Buyer of next-day firm transmission ("Firm Transmission") from the Designated Interface, a "Timely Request for Transmission" shall mean a properly completed request for Firm Transmission made by Buyer in accordance with the controlling tariff procedures, which request shall be submitted to the Receiving Transmission Provider no later than 30 minutes after delivery of Seller's Notification, provided, however, if the Receiving Transmission Provider is not accepting requests for Firm Transmission at the time of Seller's Notification, then such request by Buyer shall be made within 30 minutes of the time when the Receiving Transmission Provider first opens thereafter for purposes of accepting requests for Firm Transmission.

Pursuant to the terms hereof, delivery of the Product may under certain circumstances be redesignated to occur at an Interface other than the Designated Interface (any such alternate designated interface, an "ADI") either (a) on the Receiving Transmission Provider's transmission system border or (b) within the control area of the Receiving Transmission Provider if the Product is from a source of generation in that control area, which ADI, in either case, the Receiving Transmission Provider identifies as available for delivery of the Product in or into its control area using either firm or non-firm transmission, as available on a day-ahead or hourly basis (individually or collectively referred to as "Available Transmission") within the Receiving Transmission Provider's transmission system.

3. Rights of Buyer and Seller Depending Upon Availability of/Timely Request for Firm Transmission.

A. Timely Request for Firm Transmission made by Buyer, Accepted by the Receiving Transmission Provider and Purchased by Buyer. If a Timely Request for Firm Transmission is made by Buyer and is accepted by the Receiving Transmission Provider

and Buyer purchases such Firm Transmission, then Seller shall deliver and Buyer shall receive the Product at the Designated Interface.

i. If the Firm Transmission purchased by Buyer within the Receiving Transmission Provider's transmission system from the Designated Interface ceases to be available to Buyer for any reason, or if Seller is unable to deliver the Product at the Designated Interface for any reason except Buyer's non-performance, then at Seller's choice from among the following, Seller shall: (a) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, require Buyer to purchase such Firm Transmission from such ADI, and schedule and deliver the affected portion of the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, or (b) require Buyer to purchase non-firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by Seller, or (c) to the extent firm transmission is available on an hourly basis, require Buyer to purchase firm transmission, and schedule and deliver the affected portion of the Product on the basis of Buyer's purchase of such hourly firm transmission from the Designated Interface or an ADI designated by Seller.

ii. If the Available Transmission utilized by Buyer as required by Seller pursuant to Section 3A(i) ceases to be available to Buyer for any reason, then Seller shall again have those alternatives stated in Section 3A(i) in order to satisfy its obligations.

iii. Seller's obligation to schedule and deliver the Product at an ADI is subject to Buyer's obligation referenced in Section 4B to cooperate reasonably therewith. If Buyer and Seller cannot complete the scheduling and/or delivery at an ADI, then Buyer shall be deemed to have satisfied its receipt obligations to Seller and Seller shall be deemed to have failed its delivery obligations to Buyer, and Seller shall be liable to Buyer for amounts determined pursuant to Article Four.

iv. In each instance in which Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI pursuant to Sections 3A(i) or (ii), and Firm Transmission had been purchased by both Seller and Buyer into and within the Receiving Transmission Provider's transmission system as to the scheduled delivery which could not be completed as a result of the interruption or curtailment of such Firm Transmission, Buyer and Seller shall bear their respective transmission expenses and/or associated congestion charges incurred in connection with efforts to complete delivery by such alternative scheduling and delivery arrangements. In any instance except as set forth in the immediately preceding sentence, Buyer and Seller must make alternative scheduling arrangements for delivery at the Designated Interface or an ADI under Sections 3A(i) or (ii), Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with such alternative scheduling arrangements.

B. Timely Request for Firm Transmission Made by Buyer but Rejected by the Receiving Transmission Provider. If Buyer's Timely Request for Firm Transmission is rejected by the Receiving Transmission Provider because of unavailability of Firm Transmission from the Designated Interface, then Buyer shall notify Seller within 15 minutes after receipt of the Receiving Transmission Provider's notice of rejection ("Buyer's Rejection Notice"). If Buyer timely notifies Seller of such unavailability of Firm Transmission from the Designated Interface, then Seller shall be obligated either (1) to the extent Firm Transmission is available to Buyer from an ADI on a day-ahead basis, to require Buyer to purchase (at Buyer's own expense) such Firm Transmission from such ADI and schedule and deliver the Product to such ADI on the basis of Buyer's purchase of Firm Transmission, and thereafter the provisions in Section 3A shall apply, or (2) to require Buyer to purchase (at Buyer's own expense) non-firm transmission, and schedule and deliver the Product on the basis of Buyer's purchase of non-firm transmission from the Designated Interface or an ADI designated by the Seller, in which case Seller shall bear the risk of interruption or curtailment of the non-firm transmission; provided, however, that if the non-firm transmission is interrupted or curtailed or if Seller is unable to deliver the Product for any reason, Seller shall have the right to schedule and deliver the Product to another ADI in order to satisfy its delivery obligations, in which case Seller shall be responsible for any additional transmission purchases and/or associated congestion charges incurred by Buyer in connection with Seller's inability to deliver the Product as originally prescheduled. If Buyer fails to timely notify Seller of the unavailability of Firm Transmission, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface, and the provisions of Section 3D shall apply.

C. Timely Request for Firm Transmission Made by Buyer, Accepted by the Receiving Transmission Provider and not Purchased by Buyer. If Buyer's Timely Request for Firm Transmission is accepted by the Receiving Transmission Provider but Buyer elects to purchase non-firm transmission rather than Firm Transmission to take delivery of the Product, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

D. No Timely Request for Firm Transmission Made by Buyer, or Buyer Fails to Timely Send Buyer's Rejection Notice. If Buyer fails to make a Timely Request for Firm Transmission or Buyer fails to timely deliver Buyer's Rejection Notice, then Buyer shall bear the risk of interruption or curtailment of transmission from the Designated Interface. In such circumstances, if Seller's delivery is interrupted as a result of transmission relied upon by Buyer from the Designated Interface, then Seller shall be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for amounts determined pursuant to Article Four.

4. Transmission.

A. Seller's Responsibilities. Seller shall be responsible for transmission required to deliver the Product to the Designated Interface or ADI, as the case may be. It is expressly agreed that Seller is not required to utilize Firm Transmission for its delivery obligations hereunder, and Seller shall bear the risk of utilizing non-firm transmission. If Seller's scheduled delivery to Buyer is interrupted as a result of Buyer's attempted transmission of the Product beyond the Receiving Transmission Provider's system border, then Seller will be deemed to have satisfied its delivery obligations to Buyer, Buyer shall be deemed to have failed to receive the Product and Buyer shall be liable to Seller for damages pursuant to Article Four.

B. Buyer's Responsibilities. Buyer shall be responsible for transmission required to receive and transmit the Product at and from the Designated Interface or ADI, as the case may be, and except as specifically provided in Section 3A and 3B, shall be responsible for any costs associated with transmission therefrom. If Seller is attempting to complete the designation of an ADI as a result of Seller's rights and obligations hereunder, Buyer shall co-operate reasonably with Seller in order to effect such alternate designation.

5. Force Majeure. An "Into" Product shall be subject to the "Force Majeure" provisions in Section 1.23.

6. Multiple Parties in Delivery Chain Involving a Designated Interface. Seller and Buyer recognize that there may be multiple parties involved in the delivery and receipt of the Product at the Designated Interface or ADI to the extent that (1) Seller may be purchasing the Product from a succession of other sellers ("Other Sellers"), the first of which Other Sellers shall be causing the Product to be generated from a source ("Source Seller") and/or (2) Buyer may be selling the Product to a succession of other buyers ("Other Buyers"), the last of which Other Buyers shall be using the Product to serve its energy needs ("Sink Buyer"). Seller and Buyer further recognize that in certain Transactions neither Seller nor Buyer may originate the decision as to either (a) the original identification of the Designated Interface or ADI (which designation may be made by the Source Seller) or (b) the Timely Request for Firm Transmission or the purchase of other Available Transmission (which request may be made by the Sink Buyer). Accordingly, Seller and Buyer agree as follows:

A. If Seller is not the Source Seller, then Seller shall notify Buyer of the Designated Interface promptly after Seller is notified thereof by the Other Seller with whom Seller has a contractual relationship, but in no event may such designation of the Designated Interface be later than the prescheduling deadline pertaining to the Transaction between Buyer and Seller pursuant to Section 1.

B. If Buyer is not the Sink Buyer, then Buyer shall notify the Other Buyer with whom Buyer has a contractual relationship of the Designated Interface promptly after Seller notifies Buyer thereof, with the intent being that the party bearing actual responsibility to secure transmission shall have up to 30 minutes after receipt of the Designated Interface to submit its Timely Request for Firm Transmission.

C. Seller and Buyer each agree that any other communications or actions required to be given or made in connection with this "Into Product" (including without limitation, information relating to an ADI) shall be made or taken promptly after receipt of the relevant information from the Other Sellers and Other Buyers, as the case may be.

D. Seller and Buyer each agree that in certain Transactions time is of the essence and it may be desirable to provide necessary information to Other Sellers and Other Buyers in order to complete the scheduling and delivery of the Product. Accordingly, Seller and Buyer agree that each has the right, but not the obligation, to provide information at its own risk to Other Sellers and Other Buyers, as the case may be, in order to effect the prescheduling, scheduling and delivery of the Product

"Native Load" means the demand imposed on an electric utility or an entity by the requirements of retail customers located within a franchised service territory that the electric utility or entity has statutory obligation to serve.

"Non-Firm" means, with respect to a Transaction, that delivery or receipt of the Product may be interrupted for any reason or for no reason, without liability on the part of either Party.

"System Firm" means that the Product will be supplied from the owned or controlled generation or pre-existing purchased power assets of the system specified in the Transaction (the "System") with non-firm transmission to and from the Delivery Point, unless a different Transmission Contingency is specified in a Transaction. Seller's failure to deliver shall be excused: (i) by an event or circumstance which prevents Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, which is not within the reasonable control of, or the result of the negligence of, the Seller; (ii) by Buyer's failure to perform; (iii) to the extent necessary to preserve the integrity of, or prevent or limit any instability on, the System; (iv) to the extent the System or the control area or reliability council within which the System operates declares an emergency condition, as determined in the system's, or the control area's, or reliability council's reasonable judgment; or (v) by the interruption or curtailment of transmission to the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Seller's performance. Buyer's failure to receive shall be excused (i) by Force Majeure; (ii) by Seller's failure to perform, or (iii) by the interruption or curtailment of transmission from the Delivery Point or by the occurrence of any Transmission Contingency specified in a Transaction as excusing Buyer's performance. In any of such events, neither party shall be liable to the other for any damages, including any amounts determined pursuant to Article Four.

"Transmission Contingent" means, with respect to a Transaction, that the performance of either Seller or Buyer (as specified in the Transaction) shall be excused, and no damages shall be payable including any amounts determined pursuant to Article Four, if the transmission for such Transaction is unavailable or interrupted or curtailed for any reason, at any time, anywhere from the Seller's proposed generating source to the Buyer's proposed ultimate sink, regardless of whether transmission, if any, that such Party is attempting to secure and/or has purchased for the Product is firm or non-firm. If the transmission (whether firm or non-firm) that Seller or Buyer is attempting to secure is from source to sink is unavailable, this contingency excuses performance for the entire Transaction. If the transmission (whether firm or non-firm) that Seller

or Buyer has secured from source to sink is interrupted or curtailed for any reason, this contingency excuses performance for the duration of the interruption or curtailment notwithstanding the provisions of the definition of "Force Majeure" in Article 1.23 to the contrary.

"Unit Firm" means, with respect to a Transaction, that the Product subject to the Transaction is intended to be supplied from a generation asset or assets specified in the Transaction. Seller's failure to deliver under a "Unit Firm" Transaction shall be excused: (i) if the specified generation asset(s) are unavailable as a result of a Forced Outage (as defined in the NERC Generating Unit Availability Data System (GADS) Forced Outage reporting guidelines) or (ii) by an event or circumstance that affects the specified generation asset(s) so as to prevent Seller from performing its obligations, which event or circumstance was not anticipated as of the date the Transaction was agreed to, and which is not within the reasonable control of, or the result of the negligence of, the Seller or (iii) by Buyer's failure to perform. In any of such events, Seller shall not be liable to Buyer for any damages, including any amounts determined pursuant to Article Four.

EXHIBIT A

MASTER POWER PURCHASE AND SALE AGREEMENT CONFIRMATION LETTER

This confirmation letter shall confirm the Transaction agreed to on _____, ___ between _____ ("Party A") and _____ ("Party B") regarding the sale/purchase of the Product under the terms and conditions as follows:

Seller: _____

Buyer: _____

Product:

[] Into _____, Seller's Daily Choice

[] Firm (LD)

[] Firm (No Force Majeure)

[] System Firm

(Specify System: _____)

[] Unit Firm

(Specify Unit(s): _____)

[] Other _____

[] Transmission Contingency (If not marked, no transmission contingency)

[]	FT-Contract Path Contingency	[]	Seller	[]	Buyer
[]	FT-Delivery Point Contingency	[]	Seller	[]	Buyer
[]	Transmission Contingent	[]	Seller	[]	Buyer
[]	Other transmission contingency				

(Specify: _____)

Contract Quantity: _____

Delivery Point: _____

Contract Price:

Energy Price: _____

Other Charges: _____

Delivery Period: _____

Special Conditions: _____

Scheduling: _____

Option Buyer: _____

Option Seller: _____

Type of Option: _____

Strike Price: _____

Premium: _____

Exercise Period: _____

This confirmation letter is being provided pursuant to and in accordance with the Master Power Purchase and Sale Agreement dated _____ (the "Master Agreement") between Party A and Party B, and constitutes part of and is subject to the terms and provisions of such Master Agreement. Terms used but not defined herein shall have the meanings ascribed to them in the Master Agreement.

[Party A]	[Party B]
Name: _____	Name: _____
Title: _____	Title: _____
Phone No: _____	Phone No: _____
Fax: _____	Fax: _____

ENERGY ACCESS AGREEMENT

SCHEDULE 3

NALCOR MASTER AGREEMENT MODIFICATIONS

NALCOR MASTER AGREEMENT MODIFICATIONS

The following amendments shall be deemed to have been made to the Nalcor Master Agreement (as modified in accordance with its Cover Sheet) for the purposes of all Transactions entered into between Nalcor and NSPI pursuant to this Agreement in respect of Nalcor Supplied Energy.

ARTICLE ONE: GENERAL DEFINITIONS

The definition of "Force Majeure" set forth at Section 1.23 is replaced as follows:

> "Force Majeure" - has the meaning given to such term in the Energy Access Agreement.

The definition of "Product" set forth at Section 1.47 is replaced as follows:

> "Product" means electrical energy measured and expressed in megawatt hours, excluding all rights and value associated with such Energy in respect of associated Capacity and environmental attributes unless otherwise specified by the Parties in the Transaction, it being acknowledged by the Parties that the obligation of the Seller to deliver such electrical energy is subject to Section 3.4 ("Forgivable Events") of this Master Agreement;

The definition of "Replacement Price" set forth at Section 1.51 is replaced as follows:

> "Replacement Price" means the price, calculated using the Incremental Cost Rate, at which NSPI is deemed to have purchased or generated, acting in a commercially reasonable manner, a replacement for any Product specified in a Transaction but not delivered by Nalcor; provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall NSPI be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Nalcor's liability.

The definition of "Sales Price" set forth at Section 1.53 is replaced as follows:

> "Sales Price" means the price at which Nalcor, acting in a commercially reasonable manner, resells any Product not received by NSPI, deducting from such proceeds any (i) costs reasonably incurred by Nalcor in reselling such Product and (ii) additional transmission charges, if any, reasonably incurred by Nalcor in delivering such Product to the third party purchasers, provided, however, if Nalcor is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by NSPI, the Sales Price with respect to such unsold Product shall be deemed to be zero (0); provided, however, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Nalcor be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize NSPI's liability.

The following definition is added as a new Section 1.67:

"Confidential Information" - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.68:

"Forced Outage" - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.69:

"Forgivable Event" - means any of the following, as applicable:

(i) Force Majeure;
(ii) a Safety Event;
(iii) a Forced Outage; or
(iv) an action required to be taken by a Party to comply with Good Utility Practice.

The following definition is added as a new Section 1.70:

"Good Utility Practice" - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.71:

"Incremental Cost Rate" - means the rate in dollars per MWh that is equal to, as applicable, NSPI's incremental incurred cost associated with generating or purchasing the MWh of Product not delivered by Nalcor, as calculated by NSPI in accordance with a methodology that is accepted at such time by the Nova Scotia Utility and Review Board as an appropriate methodology for determining NSPI's hourly incremental cost per MWh to generate or purchase Energy, taking into account, to the extent applicable in the given circumstances and without duplication, items such as transmission tariff charges and other fees incurred, fuel costs, variable capital costs, environmental compliance costs, line losses, and other variable operating costs; provided, however, that if at any time no such methodology is in use, a substitute methodology shall be agreed to by Nalcor and NSPI, or failing such agreement, the substitute methodology shall be resolved by means of a Specified Dispute pursuant to the Dispute Resolution Procedure of the Energy Access Agreement. Section 1.2(m) of the Energy Access Agreement applies to the foregoing provision.

The following definition is added as a new Section 1.72:

> "NL Taxes" - means Taxes imposed by a governmental authority under the applicable law of the Province of Newfoundland and Labrador, except income Taxes and, for greater certainty, does not include GST and all other federal or international Taxes.

The following definition is added as a new Section 1.73:

> "NS Taxes" - means Taxes imposed by a governmental authority under the applicable law of the Province of Nova Scotia, except income Taxes and, for greater certainty, does not include GST and all other federal or international Taxes.

The following definition is added as a new Section 1.74:

> "Safety Event" - has the meaning given to such term in the Energy Access Agreement.

The following definition is added as a new Section 1.75:

> "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 transmission tariffs) 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.

ARTICLE TWO: TRANSACTION TERMS AND CONDITIONS

Section 2.2 ("Governing Terms") is amended by: (1) inserting the following as a new third sentence: "All references herein to the "Master Agreement" or to "this Agreement" shall be deemed to refer to the Master Agreement as amended by Schedule 3 of the EAA", and (2) replacing the fourth sentence with the following sentence: "Any inconsistency or conflict between the terms governing a Transaction shall be resolved first in favour of the terms of the Transaction, next in favour of the terms of this Master Agreement, then in favour of any applicable terms of the EAA."

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

The following provision is added as a new Section 3.4:

> "3.4 Forgivable Events. To the extent that a Party (in this Section referred to as the "First Party") is prevented by a Forgivable Event from delivering or receiving, as

applicable, all or part of the Product pursuant to a Transaction and it gives notice and details of the Forgivable Event to the other Party as soon as practicable, then, the First Party shall be excused from the performance of its obligation to deliver or receive with respect to such Transaction. The other Party shall not be required to perform or resume performance of its obligations to the First Party corresponding to the obligations of the First Party that have been excused by the Forgivable Event."

ARTICLE FOUR: REMEDIES FOR FAILURE TO DELIVER/RECEIVE

Section 4.1 ("Seller Failure") is amended by inserting the words ", by Section 3.4," immediately prior to the words "or by Buyer's failure to perform" in the third line.

Section 4.2 ("Buyer Failure") is amended by inserting the words ", by Section 3.4," immediately prior to the words "or by Seller's failure to perform" in the third line.

ARTICLE FIVE: EVENTS OF DEFAULT; REMEDIES

Section 5.4 ("Notice of Payment of Acceleration Payment") is amended by deleting the words "or its Affiliate" from the last sentence and, also in the last sentence, deleting the words "any other agreement" and replacing them with the words "the Energy Access Agreement".

Section 5.8 ("Additional Rights on Default") is amended by deleting the words "any other agreements, instruments or undertakings between the Non Defaulting Party and the Defaulting Party" in subsection (v) and replacing them with the words "the Energy and Capacity Agreement".

ARTICLE SIX: PAYMENT AND NETTING

Section 6.2 ("Timeliness of Payment") is amended by deleting the words "later of the twentieth (20^{th}) day of each month, or tenth (10^{th})" and inserting in their place the words "twentieth (20^{th})".

ARTICLE NINE: GOVERNMENTAL CHARGES

The following provision is added as a new Section 9.4:

"9.4 Provincial Taxes. Notwithstanding Section 9.2 and the definition of "Governmental Charges":

(a) NSPI shall pay all NS Taxes on or with respect to the Product purchased and received pursuant to this Agreement; and

(b) Nalcor shall pay all NL Taxes on or with respect to the Product sold and delivered pursuant to this Agreement."

The following provision is added as a new Section 9.5:

"9.5 Tax Gross-up. If subsection 182(1) of the *Excise Tax Act* (Canada) applies to any amount payable by one Party to the other Party, such amount shall first be

increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the *Excise Tax Act*, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the *Excise Tax Act*."

The following provision is added as a new Section 9.6:

"9.6 HST Registration Status and Residency.

(a) Nalcor represents and warrants that it is registered for purposes of the GST and that its registration number is 837364611, and undertakes to advise NSPI of any change in its GST registration status or number.

(b) NSPI represents and warrants that it is registered for purposes of the GST and that its registration number is 11931 4938, and undertakes to advise Nalcor of any change in its GST registration status or number.

(c) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada), and undertakes to advise NSPI of any change in its residency status.

(d) NSPI represents and warrants that it is not a non-resident of Canada for the purposes of the *Income Tax Act*, and undertakes to advise Nalcor of any change in its residency status."

The following provision is added as a new Section 9.7:

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

(a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;

(b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and

(c) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

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

The following provision is added as a new Section 9.8:

"9.8 Tax Indemnity. Each Party (in this Section referred to as the "First Party") shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any taxes for which the First Party is responsible under Article Nine hereof or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the *Income Tax Act*. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay GST pursuant to Article Nine, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

(a) any and all Taxes imposed by any government authority on the other Party with respect to this Agreement, and any and all claims including payment of Taxes which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing, if and to the extent such Taxes or claims result from the failure by the First Party to pay any and all Taxes imposed as stated herein; and

(b) any and all Taxes imposed by any government authority with respect to the supplies contemplated by this Agreement, and any and all claims (including Taxes) which may be brought against or suffered by the other Party or which the other Party may sustain, pay or incur in conjunction with the foregoing, if and to the extent such Taxes or claims result from the failure by the First Party to pay any and all Taxes imposed as stated herein."

The following provision is added as a new Section 9.9:

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

(a) any such amount payable by the First Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and

(b) for greater certainty, this Section shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement."

ARTICLE TEN: MISCELLANEOUS

Section 10.6 ("Governing Law") is amended by: (1) deleting the words "State of New York" on the third and fourth lines and replacing them with the words "Province of Newfoundland and Labrador", and (2) adding the following as a new third sentence: "The Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada."

Section 10.8 ("General") is amended by inserting the following immediately prior to the words "the Party A Tariff" in the second line: "the Energy Access Agreement,".

Section 10.11 ("Confidentiality") is replaced as follows:

> "10.11 Confidentiality. - The Parties agree that Article 14 of the EAA is incorporated in this Master Agreement by reference and applies to all Confidential Information disclosed by one Party to the other under or in connection with this Master Agreement and any Transaction hereunder, the Party disclosing Confidential Information being a Disclosing Party as defined in the EAA, and the Party receiving Confidential Information being a Receiving Party as defined in the EAA."

ENERGY ACCESS AGREEMENT

SCHEDULE 4

DESCRIPTION OF NALCOR PROGRESS REPORT

DESCRIPTION OF THE NALCOR PROGRESS REPORT

Each Progress Report will contain the following elements:

1.0 A summary of the actual quantities of Energy made available to NSPI in each of the prior Contract Years, with detail that is consistent with the components identified in Section 4.2 of the Agreement;

2.0 A forecast identifying the total quantity of Energy predicted to be made available to NSPI in each of: (a) the then-current Contract Year, and (b) the subsequent Contract Year;

3.0 For each of the Contract Years following those identified in Section 2.0, above, remaining in the Term, Nalcor will provide a forecast of the amount of Energy that is predicted to be made available to NSPI. This forecast will be based upon an assessment of the following data, which will also be included in the Progress Report:

- NL Native Load forecast that will be primarily based on the most current planning load forecast used by NLH before its regulator;
- A summary description of the NL generating facilities that are available to contribute to the production of Nalcor Generated Energy. Such description will identify facility name, installed capacity, firm annual Energy capability, average annual Energy capability, and the planned retirement date of each applicable facility;
- A summary description of the NL generating facilities that are included in the generation expansion plans for NL. Such description will identify the intended in-service date, installed plant capacity, firm annual Energy capability and average annual Energy capability of each applicable facility; and
- A description of any changes to the generation planning criteria for Newfoundland and Labrador from that which was in effect as of the Effective Date of this Agreement.

4.0 A summary of the quantities of Energy that either have been made available, or are forecasted to be made available to NSPI in each Contract Year of the Term, as the case may be; and

5.0 An overall assessment comparing the sum total of these Contract Year Energy availability quantities to the Commitment, and the calculation of any actual or predicted Variance, if applicable.

ENERGY ACCESS AGREEMENT

SCHEDULE 5

FORM OF BALANCING SERVICE AGREEMENT

NALCOR ENERGY

and

[EMERA INC. / NOVA SCOTIA POWER INC.]

BALANCING SERVICE AGREEMENT

[Notes to draft that are in italics and square brackets are intended to provide direction to the future drafters who will finalize the execution version of this agreement.]

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BALANCING SERVICE AGREEMENT

THIS BALANCING SERVICE AGREEMENT is made effective the • day of •, 20• (the "**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 / NSPI**, *as Emera and/or NSPI may elect in accordance with Section 5.7 of the Energy Access Agreement. The party or parties so elected is referred to for convenience in this Agreement form as "Emera" (to be revised to "NSPI" if applicable).*]

WHEREAS:

A. Nalcor, Emera and NSPI entered into an Energy Access Agreement on April 13, 2015 providing NSPI with access to market-priced Energy when needed to economically serve NSPI and its ratepayers;

B. This Balancing Service Agreement is entered into in accordance with Section 5.8(a) of the Energy Access Agreement;

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

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals and, subject to **Section 1.2(h)**, in the Schedules:

"**ATIPPA**" has the meaning set forth in **Section 11.3(a)**;

"**Affiliate**" means, with respect to any Person, any other Person who, directly or indirectly, Controls, is Controlled by, or is under common Control with, such Person; provided however that 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;

"**Alternative Generation Facilities**" means the wind, solar, tidal, or other intermittent generation facilities located in NS or adjacent waters which from time to time are constructed or contracted for by Emera for the purpose contemplated by Section 5.7 of the Energy Access Agreement and in respect of which the balancing service is provided pursuant to this Agreement;

"**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;

"**Authorized Purpose**" has the meaning set forth in **Section 11.1(a)**;

"**Balancing Energy**" means Energy generated by the Alternative Generation Facilities and delivered by Emera to Nalcor, or Energy redelivered by Nalcor to Emera, as applicable, in each case in accordance with **Article 2**;

"**Balancing Fee**" has the meaning set forth in **Section 2.2(d)**;

"**Balancing Period**" has the meaning set forth in **Section 2.4**;

"**Balancing Year**" means each calendar year during the Term following the In-Service Date, commencing on January 1 and concluding on December 31, provided that:

(a) if the In-Service Date is not January 1 of the applicable year, the first Balancing Year of the Term will be the partial calendar year starting on the In-Service Date and ending on December 31 of such year; and

(b) if paragraph (a) applies, the last Balancing Year of the Term will be the partial calendar year starting on the 25th anniversary of the January 1 commencement of

the second Balancing Year and ending on the date immediately preceding the 26th anniversary of the In-Service Date.

"**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;

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

"**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;

"**Claiming Party**" has the meaning set forth in **Section13.2(a)**;

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

"**Confidential Information**" means:

(a) all information, in whatever form or medium, whether factual, interpretative or strategic, furnished by or on behalf of the Disclosing Party, directly or indirectly, to the Receiving Party, including 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, apparatuses, equipment, business opportunities, customer and supplier lists, know-how, trade or other secrets, contracts, financial statements, financial projections and other financial information, financial strategies, engineering reports, environmental reports, land and lease information, technical and economic data, marketing information and field notes, marketing strategies, marketing methods, sketches, photographs, computer programs, records or software, specifications, models or other information that is or may be either applicable to or related in any way to the assets, business or affairs of the Disclosing Party, its Affiliates, this Agreement or the transactions contemplated hereunder; and

(b) all summaries, notes, analyses, compilations, studies and other records prepared by the Receiving Party that contain or otherwise reflect or have been generated or derived from, in whole or in part, confidential information described in the foregoing paragraph (a);

"**Contract Year**" has the meaning set forth in the Energy Access Agreement;

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

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

"**Disclosing Party**" means a Party or an Affiliate of a Party that discloses Confidential Information to another Party or an Affiliate of another Party;

"**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 **Section13.1(a)**;

"**Effective Date**" has the meaning set forth in the commencement of this Agreement [*This assumes that the Agreement will be entered into in the year preceding the In-Service Date of the Alternative Generation Facilities.*];

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

"**Emera Affiliate Assignee**" means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 12.2(a)**, either directly by Emera or by any Affiliate of Emera that was a previous assignee of such Emera Rights;

"**Emera Default**" has the meaning set forth in **Section 7.1**;

"**Emera Group**" has the meaning set forth in **Section 9.1**;

"**Energy**" means electrical energy measured and expressed in MWh or GWh;

"**Energy Access Agreement**" means the agreement dated April 13, 2015 between Nalcor, Emera and NSPI providing NSPI with access to market-priced Energy when needed to economically serve NSPI and its ratepayers;

"**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;

"**Escalation Factor**" means the multiplier that is equal to the escalation rate resulting from the cumulative effect of the annual CPI percentage change applicable to each whole or partial year during the period starting on October 20, 2013 and ending on the first day of the Balancing Year in respect of which the applicable Balancing Fee payment is made;

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

"**First Two Balancing Periods**" has the meaning set forth in **Section2.6(b)**;

"**Forced Outage**" means the removal from service availability of a generating unit, transmission line or other facility due to emergency reasons or due to the unanticipated failure of such equipment, other than by reason of the failure by the Party claiming the Forced Outage, or an Affiliate of that Party, to comply with Good Utility Practice in operating the applicable facility or facilities;

"**Force Majeure**" means an event, condition or circumstance (each, an "**event**") beyond the reasonable control of the Party claiming the Force Majeure, which, despite all commercially reasonable efforts, timely taken, of the Party claiming the Force Majeure to prevent its occurrence or mitigate its effects, causes a delay or disruption in the performance of any obligation (other than the obligation to pay monies due) imposed on such Party hereunder. Provided that the foregoing conditions are met, "**Force Majeure**" may include:

(a) an act of God, hurricane or similarly destructive storm, fire, flood, iceberg, severe snow or wind, ice conditions (including sea and river ice and freezing precipitation), geomagnetic activity, an environmental condition caused by pollution, forest or other fire or other cause of air pollution, an epidemic declared by an Authorized Authority having jurisdiction, explosion, earthquake or lightning;

(b) a war, revolution, terrorism, insurrection, riot, blockade, sabotage, civil disturbance, vandalism or any other unlawful act against public order or authority;

(c) a strike, lockout or other industrial disturbance;

(d) breakage or an accident or other inadvertent action or inability to act causing material physical damage to, or materially impairing the operation of, or access to, any of the Nova Scotia Transmission System, the NL Transmission System, or the Maritime Link or any machinery or equipment comprising part of or used in connection with any of such facilities;

(e) the inability to obtain or the revocation, failure to renew or other inability to maintain in force, or the amendment of any order, permit, licence, certificate or authorization from any Authorized Authority that is required in respect of the delivery or redelivery of Balancing Energy, unless such inability or amendment is caused by a breach of the terms thereof or results from an agreement made by the Party seeking or holding such order, permit, licence, certificate or authorization; and

(f) where claimed by Nalcor, the inability of the Maritime Link to receive, transmit or deliver Energy under the terms of the Maritime Link Transmission Service Agreements; and

(g) any unplanned partial or total curtailment, interruption or reduction of the generation or delivery or redelivery of Balancing Energy that is required by the applicable System Operator for the safe and reliable operation of any plant or facility or that results from the automatic operation of power system protection and control devices;

but the following shall not be considered a Force Majeure event:

(i) lack of finances or changes in economic circumstances of a Party;

(ii) if the event relied upon resulted from a breach of Good Utility Practice by the Party claiming Force Majeure; or

(iii) any delay in the settlement of any Dispute;

"**Forgivable Event**" means any of the following, as applicable:

(a) prior the scheduling of delivery of Balancing Energy pursuant to **Section 2.3(c)(i)**, a requirement by Nalcor to utilize such Energy in order to satisfy NL Native Load;

(b) Force Majeure;

(c) a Safety Event;

(d) a Forced Outage; or

(e) an action required to be taken by a Party to comply with Good Utility Practice;

"**Formal Agreements**" means the following agreements dated July 31, 2012 between Nalcor and Emera:

(a) Maritime Link - Joint Development Agreement;

(b) Energy and Capacity Agreement;

(c) Maritime Link (Nalcor) Transmission Service Agreement;

(d) Maritime Link (Emera) Transmission Service Agreement;

(e) Nova Scotia Transmission Utilization Agreement;

(f) New Brunswick Transmission Utilization Agreement;

(g) MEPCO Transmission Rights Agreement;

(h) Interconnection Operators Agreement;

(i) Joint Operations Agreement;

(j) Newfoundland and Labrador Development Agreement;

(k) Labrador-Island Link Limited Partnership Agreement;

(l) Inter-Provincial Agreement; and

(m) Supplemental Agreement;

"**GWh**" means gigawatt hours;

"**Good Utility Practice**" means those project management, design, procurement, construction, operation, maintenance, repair, removal and disposal practices, methods, and acts that are engaged in by a significant portion of the electric utility industry in Canada during the relevant time period, or any other practices, methods or acts that, in the exercise of reasonable judgment in light of the facts known at the time a decision is made, could have been expected to accomplish a desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be the optimum practice, method, or act to the exclusion of others, but rather to be a spectrum of acceptable practices, methods or acts generally accepted in such electric utility industry for the project management, design, procurement, construction, operation, maintenance, repair, removal and disposal of electric utility facilities in Canada. Notwithstanding the foregoing references to the electric utility industry in Canada, in respect solely of Good Utility Practice regarding subsea HVdc transmission cables, the standards referenced shall be the internationally recognized standards for such practices, methods and acts generally accepted with respect to subsea HVdc transmission cables. Good Utility Practice shall not be determined after the fact in light of the results achieved by the practices, methods or acts undertaken but rather shall be determined based upon the consistency of the practices, methods or acts when undertaken with the standard set forth in the first two sentences of this definition at such time;

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

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

"**Indemnified Party**" has the meaning set forth in **Section 9.3(a)**;

"**Indemnitor**" has the meaning set forth in **Section 9.3(a)**;

"**In-Service Date**" means the initial in-service date of the Alternative Generation Facilities, being the date that such facilities are first capable of and ready to reliably operate and deliver Energy to the NS Transmission System in accordance with their design criteria;

"**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;

"**Interconnection Operators Agreement**" means the agreement dated July 31, 2012, between NLH and Nova Scotia Power Incorporated relating to the interconnected operations of NLH and Nova Scotia Power Incorporated, and includes any operational protocols implemented pursuant to that agreement;

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

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

"**Lender Recipient**" has the meaning set forth in **Section 11.1(c)**;

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

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

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

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

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

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

"**NL Transmission System**" means the bulk Energy transmission system in NL;

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

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

"**Nalcor Affiliate Assignee**" means an Affiliate of Nalcor to which all or any portion of the Nalcor Rights have been assigned in accordance with **Section 12.1(a)**, either directly by Nalcor or by any Affiliate of Nalcor that was a previous assignee of such Nalcor Rights;

"**Nalcor Default**" has the meaning set forth in **Section 7.3**;

"**Nalcor Group**" has the meaning set forth in **Section 9.2**;

"**Native Load Event**" has the meaning set forth in **Section 2.6(a)**;

"**Net Imbalance**" has the meaning set forth in **Section 2.5(b)**;

"**Negative Imbalance**" means a Net Imbalance resulting from a greater amount of Balancing Energy having been delivered by Nalcor to Emera than has previously been delivered by Emera to Nalcor;

"**Nominated Rate**" has the meaning set forth in **Section 2.2(a)**;

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

"**Nova Scotia Transmission System**" means the bulk Energy transmission system in NS;

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

"**NSPI**" means Nova Scotia Power Incorporated, a company incorporated pursuant to the laws of NS;

"**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 15.1**;

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

"**Payee**" has the meaning set forth in **Section 4.1**;

"**Payor**" has the meaning set forth in **Section 4.1**;

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

"**Positive Imbalance**" means a Net Imbalance resulting from a greater amount of Balancing Energy having been delivered by Emera to Nalcor than has previously been redelivered by Nalcor to Emera;

"**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;

"**Receiving Party**" means a Party or an Affiliate of a Party that receives Confidential Information from another Party or an Affiliate of another Party;

"**Recipient Party**" has the meaning set forth in **Section 13.2(a)**;

"**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;

"**Repairs**" means repairs, changes, renewals, improvements or replacements;

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

"**Safety Event**" means an event which causes a Party to suspend, as applicable, delivery or redelivery of Balancing Energy for the purpose of safeguarding life or property by making Repairs to its facilities in accordance with Good Utility Practice;

"**Schedule**", when used as a verb, means to take all acts necessary to schedule, or cause to be scheduled, the delivery of Energy to the Delivery Point in accordance with this Agreement;

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

"**Supporting Material**" has the meaning set forth in **Section 4.1**;

"**Tax**" or "**Taxes**" means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than Tariff Charges) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

"**Term**" has the meaning set forth in **Section 6.1**;

"**third party**" means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party;

"**Third Party Claim**" means a Claim referred to in **Section 9.1** or **9.2**;

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

"**Undelivered Balancing Energy**" has the meaning set forth in **Section 2.6**; and

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

1.2 Construction of Agreement

(a) Interpretation Not Affected by Headings, etc. - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an "**Article**", "**Section**", "**Schedule**" or "**Appendix**" followed by a number and/or a letter refer to the specified article, section, schedule or appendix of this Agreement. The terms "**this Agreement**", "**hereof**", "**herein**", "**hereby**", "**hereunder**" and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document, other than a Formal Agreement, shall be, unless otherwise stated herein, a reference to that agreement, instrument or other document as it stood on the Effective Date. All references to a Formal Agreement shall be a reference to that Formal Agreement as modified, amended, supplemented and restated from time to time.

(b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.

(c) "Including" - The word "including", when used in this Agreement, means "including without limitation".

(d) Accounting References - Where the character or amount of any asset or liability or item of income or expense is required to be determined, or any consolidation or other accounting computation is required to be made for the purposes of this Agreement, the same shall be done in accordance with US GAAP except where the application of such principles is inconsistent with, or limited by, the terms of this Agreement. Notwithstanding the foregoing provision of this **Section 1.2(d)**, Emera shall use commercially reasonable efforts to provide Nalcor with all of the information it needs to prepare Nalcor's accounting records 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 therein) 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" by a Party, then (i) such approval by a Party must be in writing, and (ii) such Party shall be free to take such action having regard to that Party's own interests, in its sole and absolute discretion.

(m) Subsequent Agreements - Wherever a provision of this Agreement states that **Section 1.2(m)** applies, in respect of the matters referred to in that provision:

(i) each Party shall use commercially reasonable efforts to reach agreement with the other Party, negotiating in good faith in a manner characterized by honesty in fact and the observance of reasonable commercial standards of fair dealing;

(ii) any failure, inability or refusal of either Party or both Parties to reach agreement shall constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure;

(iii) such Dispute shall be resolved as a Specified Dispute if so specified in such provision; and

(iv) if such Dispute is not a Specified Dispute, the Parties will be deemed to have agreed pursuant to Section 5.1 of the Dispute Resolution Procedure to resolve the Dispute by arbitration.

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 13**, 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	-	Form of Assignment Agreement
Schedule 2	-	Dispute Resolution Procedure

ARTICLE 2
BALANCING SERVICES

2.1 Provision of Balancing Services

In accordance with this Agreement, Emera shall deliver Balancing Energy to Nalcor and Nalcor shall redeliver Balancing Energy to Emera for the purpose of balancing the intermittent output of the Alternative Generation Facilities.

2.2 Nomination of Energy Flow Rate

(a) Nomination of Energy Flow Rate - In respect of each Balancing Year other than an initial partial Balancing Year, Emera shall advise Nalcor by Notice, on or before October 31 of the year preceding such Balancing Year, of the maximum energy flow rate in MW elected by Emera (the "**Nominated Rate**") to be made available by Nalcor during such Balancing Year. In respect of an initial partial Balancing Year, Emera shall advise Nalcor of the Nominated Rate by Notice by no less than 60 days prior to the In-Service Date.

(b) Maximum Flow Rate - The Nominated Rate will not exceed +/- the MW amount that is the lesser of:

(i) the aggregate generation capacity available to Emera in the applicable Balancing Year from the Alternative Generation Facilities then being utilized by Emera, and

(ii) **[100 MW]**,

[*Aggregate maximum of +/- 100 MW to be shared between NSPI and Emera if those parties are both entering into Balancing Service Agreements pursuant to Section 5.8 of the EAA – revise the 100 MW reference accordingly if applicable*]

stated in increments of 1 MW, to be available at all times during the applicable Balancing Year. For greater certainty, the nomination of each 1 MW of balancing services will allow for a flow of up to 1 incremental MW to be delivered to or received from Nalcor at the Delivery Point.

(c) If No Nomination is Made - If Emera does not so advise Nalcor in accordance with **Section 2.2(a)**, Emera will be deemed to have elected a Nominated Rate of zero MW for the applicable Balancing Year and Nalcor will not be obliged to receive or redeliver Balancing Energy during such Balancing Year.

(d) Balancing Fee

(i) For each Balancing Year in respect of which Emera elects a Nominated Rate greater than zero MW, Emera shall pay to Nalcor a fee in respect of the Nominated Rate (the "**Balancing Fee**") calculated as follows:

Nominated Rate * X

where X equals $87,600 multiplied by the Escalation Factor.

If the Effective Date of this Agreement is not January 1, resulting in a partial initial and final Balancing Year of the Term, the Balancing Fee shall be pro-rated for such Balancing Years.

(ii) The Balancing Fee shall be payable in monthly installments calculated by (A) dividing the Balancing Fee by 12, in the case of a Balancing Year that is a full calendar year, or (B) dividing the Balancing Fee by 365 and multiplying the resulting quotient by the number of days in the applicable full or partial month, in the case of a Balancing Year that is a partial calendar year. Such installments shall be payable in arrears on or before the 20th day of the following month.

(iii) If the CPI for a relevant calendar year has not yet been published at the time that a calculation pursuant to this **Section 2.2(d)** is required to be performed, then the calculation will be performed using the then-most current CPI. Upon the publication of the updated CPI for the relevant time period, the calculation will be re-performed. If the re-performance of the calculation results in an increase or decrease to the applicable Balancing Fee, then subsequent monthly installments will be adjusted accordingly and a credit or charge associated with any required adjustments to previous installment payments in respect of the applicable Balancing Fee will be accounted for on the next following invoice submitted to Emera by Nalcor.

2.3 Delivery and Redelivery of Balancing Energy

(a) Delivery and Redelivery of Balancing Energy - At an energy flow rate not exceeding the then-applicable Nominated Rate and in accordance with the provisions of this **Article 2**, Emera may, at its option:

(i) deliver Balancing Energy to Nalcor and Nalcor shall accept delivery of such Energy from Emera, and

(ii) take redelivery of Balancing Energy from Nalcor and Nalcor shall redeliver such Energy to Emera.

(b) Delivery of Balancing Energy by Emera

(i) At any time during each Balancing Period and without prior scheduling, but subject to **Section 2.3(b)(ii)**, Emera may deliver Balancing Energy to Nalcor using automatic generation control or a similar control method and at an energy flow rate not exceeding the then-applicable Nominated Rate.

(ii) Delivery of Balancing Energy to Nalcor may be adjusted by Emera, at its discretion, at a maximum ramp rate of 10 MW/minute. The foregoing maximum ramp rate applies to adjustments made during the course of ongoing deliveries of Balancing Energy by Emera to Nalcor, as well as to the rate at which Emera may ramp its rate of delivery of Balancing Energy when commencing delivery from an initial level of zero MW.

(iii) Delivery of Balancing Energy shall be conducted in accordance with the Interconnection Operators Agreement, including any protocols with respect to Balancing Energy that may then be incorporated into such agreement.

(iv) Delivery of Balancing Energy by Emera to Nalcor may occur concurrently with the redelivery of Balancing Energy by Nalcor to Emera.

(v) Nalcor shall accept Balancing Energy delivered by Emera in accordance with this **Section 2.3(b)**, except to the extent Nalcor is prevented from doing so due to a Forgivable Event.

(c) Delivery of Balancing Energy by Nalcor

(i) Scheduling of Balancing Energy – Emera shall request and, subject to Forgivable Events, Nalcor shall then Schedule the redelivery of Balancing Energy to Emera in accordance with such request. The redelivery of Balancing Energy by Nalcor shall be Scheduled on a day-ahead basis in accordance with prevailing scheduling protocols and practices governing the transfer of Energy between the NL Transmission System and the Nova Scotia Transmission System.

(ii) Delivery of Balancing Energy - Once Balancing Energy has been Scheduled in accordance with **Section 2.3(c)(i)**, Nalcor shall be obliged to redeliver and Emera shall be obliged to receive such Balancing Energy, in both cases subject to Forgivable Events.

(d) Delivery Point - Balancing Energy that is delivered or received by the Parties will be delivered or received at the Delivery Point.

2.4 Balancing Period

(a) The periods for determining the Parties' balancing obligations under this Agreement will be the calendar months during each Balancing Year, and, if applicable, the initial partial calendar month in the first Balancing Year and the final partial calendar month in the last Balancing Year (each a "**Balancing Period**").

(b) In each Balancing Period, Emera shall request Nalcor to redeliver an amount of Balancing Energy to Emera pursuant to **Section 2.3(c)(i)** during such Balancing Period that results in any Net Imbalance that exists at the end of such Balancing Period not exceeding two GWh.

(c) In each Balancing Period, Emera may request Nalcor to deliver Balancing Energy to Emera in an amount in excess of the Balancing Energy previously delivered by Emera to Nalcor in such Balancing Period provided that such request does not result in a Negative Imbalance of greater than two GWh. Nalcor will have no obligation to Schedule and deliver Energy to Emera in any Balancing Period if such delivery would result in a Negative Imbalance of greater than two GWh.

2.5 Energy Imbalances

(a) Financial Adjustments - Balancing Energy will be provided by the Parties on a MWh-for-MWh basis, with no financial adjustment or other payment to either Party, other than the Balancing Fee.

(b) Net Imbalances - A net imbalance of Balancing Energy occurs if, at the end of the applicable Balancing Period, the net Balancing Energy amount that has cumulatively been exchanged between the Parties in such Balancing Period and all prior Balancing Periods is not equal to zero (a "**Net Imbalance**"). Net Imbalances will be addressed as follows:

(i) Net Imbalances of up to Two GWh in a Balancing Period - To the extent that a Net Imbalance is less than or equal to two GWh, such imbalance will be reconciled through deliveries of additional Balancing Energy by Emera to Nalcor, or by Emera requesting the redelivery of additional Balancing Energy by Nalcor to it, as applicable, in a subsequent Balancing Period.

(ii) Net Imbalances greater than Two GWh – Subject to **Section 2.6**, to the extent that a Net Imbalance is greater than two GWh, the Energy amount that is in excess of two GWh may be retained by the recipient Party for its own use or resale and no compensation shall be payable or further adjustment or reconciliation made with respect to such retained Energy.

2.6 Forgivable Events – Redelivery of Balancing Energy

If, due to a Forgivable Event, Nalcor is not able to redeliver Balancing Energy to Emera at the Delivery Point in a quantity up to that of any Positive Imbalance, or Emera is not able

to accept delivery of such quantity of Balancing Energy at the Delivery Point (such Energy quantities being "**Undelivered Balancing Energy**"), then:

(a) Reduction of Balancing Fee - For each Balancing Period in respect of which (i) Emera has requested that Nalcor redeliver Balancing Energy pursuant to **Section 2.3(c)(i)**, and (ii) some or all of the Balancing Energy so requested by Emera cannot be redelivered by Nalcor within such Balancing Period due to a Forgivable Event described by paragraph (a) of the definition of "Forgivable Event" (a "**Native Load Event**"), the Balancing Fee payable for such Balancing Period will be determined as follows:

> Monthly installment of Balancing Fee x ((MWh of Balancing Energy so requested by Emera minus MWh of Undelivered Balancing Energy not redelivered by Nalcor during such Balancing Period by reason of Native Load Event) / MWh of Balancing Energy so requested by Emera).

(b) Subsequent Delivery of Energy - Subject to **Section 2.6(c)**, following the cessation of the applicable Forgivable Event, Emera and Nalcor shall cooperate in good faith and use commercially reasonable efforts to cause the Undelivered Balancing Energy to be redelivered by Nalcor to Emera in accordance with **Section 2.3** of this Agreement in the Balancing Period in which it was due for redelivery or in the immediately following Balancing Period (the "**First Two Balancing Periods**").

(c) Extended Forgivable Events - If, as a result of a Forgivable Event, the Undelivered Balancing Energy cannot be so redelivered within the applicable First Two Balancing Periods, then Emera may, at its option, elect either:

(i) to take delivery of the Undelivered Balancing Energy in the next-following Balancing Period and, if such Energy cannot be obtained by Nalcor from sources in NL for any reason including by operation of law, Nalcor shall procure such Energy from market purchases or otherwise from a source or sources external to NL, or

(ii) to be paid monetary compensation for such Undelivered Balancing Energy, calculated in accordance with inadvertent Energy accounting standards and procedures developed pursuant to Section 4.9 of the Interconnected Operators Agreement, in which case the compensation will be paid as if the Undelivered Balancing Energy was inadvertent Energy; provided, however that if: (A) such standards and procedures do not provide a mechanism to attribute a monetary value to such Energy quantities, or (B) there is a Dispute regarding the application of this **Section 2.6(c)(ii)**, then either Party may refer the matter for resolution as a Specified Dispute pursuant to Section 6 of the Dispute Resolution Procedure.

Such option will be exercised at least five days preceding the start of the next-following Balancing Period, and if a Forgivable Event is ongoing, will be exercised on a monthly basis in accordance with the foregoing.

2.7 Good Utility Practice

The Parties shall perform their respective obligations under this Agreement in accordance with Good Utility Practice.

ARTICLE 3
PERMITS, LICENCES AND APPLICABLE LAW

3.1 Licences and Compliance with Law

(a) Each Party shall each be responsible for obtaining and maintaining any licences and permits as may be required for its respective performance of this Agreement.

(b) Each Party shall comply with any Applicable Law of any Authorized Authority with jurisdiction over the subject matter of this Agreement.

ARTICLE 4
INVOICING AND PAYMENT

4.1 Invoices

Unless otherwise provided in this Agreement with respect to specific payments, the calendar month is the standard period for invoicing amounts payable by a Party (the "**Payor**") to the other Party (the "**Payee**") hereunder. On or before the 15th day of each calendar month, the Payee shall provide an invoice to the Payor for all amounts in respect of the preceding month chargeable by the Payee to the Payor and, subject to **Section 4.8**, any amounts not previously invoiced to the Payor. The Payee shall provide with the invoice such supporting documents and information as the Payor may reasonably require to verify the accuracy of the fees, charges and third party charges invoiced (the "**Supporting Material**").

4.2 Disputed Amounts

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

4.3 Time and Method of Payment

Except with respect to a payment to be made pursuant to **Section 2.2(d)(ii)**, which Emera shall make in accordance with that Section, within 30 days after its receipt of a properly prepared invoice, accompanied by acceptable Supporting Material, the Payor shall pay to the Payee the amount stated on the invoice less any amounts disputed pursuant to **Section 4.2** and any withholding required by Applicable Law. The Payor shall make payment by electronic funds transfer or other mutually agreed method to an account designated by the Payee.

4.4 Effect of Payment

Notwithstanding **Section 4.2**, payment of an invoice will not prejudice the right of the Payor to dispute the correctness of the invoice for a period of up to two years after the end of the calendar year in which the Payor received the invoice. Failure by the Payor to dispute charges will not be deemed to be acceptance of the charges or preclude the Payor from subsequently disputing an amount or conducting an audit of the charges within two years after the end of the calendar year in which the Payor received the invoice. Any charges not disputed in writing by the Payor within two years after the end of the calendar year in which the Payor received the invoice for such charges will conclusively be presumed to be true and correct.

4.5 Resolution of Objections

The Parties shall make good faith efforts to resolve any disputed amounts by mutual agreement within 60 days after the Payee's receipt of a notification of disputed amounts pursuant to **Section 4.2**. If the disputed amounts are not resolved within such period, or such extended period as may be agreed in writing by the Parties, the disputed amounts will constitute a Dispute and may be submitted by either Party for resolution pursuant to the Dispute Resolution Procedure. Once the disputed amounts are resolved, the Payor shall pay any amount determined to be owing to the Payee within five Business Days after the Payor receives an invoice from the Payee for such amount.

4.6 Overpayments

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

4.7 Interest on Overdue Amounts

Any amount not paid by either Party when due, including any charge disputed by the Payor pursuant to **Section 4.2** and subsequently determined to be valid, which shall be considered to have been due on its original due date pursuant to **Section 4.3**, and any refund of an overpayment pursuant to **Section 4.6**, will bear interest at the Prime Rate plus three percent per annum, calculated daily not in advance, from the date upon which the payment became due to and including the date of payment, and interest accrued will be payable on demand.

4.8 Waiver of Unbilled Charges

If a Payee entitled to payment in respect of an amount paid by the Payee to a third party fails to invoice the Payor pursuant to this **Article 4** for such amount within six months after the date the Payee made payment to the third party, the right to such payment by the Payor is waived. Notwithstanding the foregoing, a Party may recover Taxes pursuant to a statutory right to recover such Taxes, including the right to recover HST pursuant to Section 224 of the Excise Tax Act.

4.9 Records and Audits

Each Party shall keep complete and accurate records and all other data required by it for the purpose of proper administration of this Agreement. Records shall be retained for at least seven years after the year in which they were created. Each Party shall provide or cause to be provided to the other Party reasonable access to the relevant and appropriate financial and operating records or data kept by it or on its behalf relating to this Agreement reasonably required for the other Party to comply with its obligations to Authorized Authorities, to verify billings, to verify information provided in accordance with this Agreement or to verify compliance with this Agreement. Either Party may use its own employees or a mutually agreed third party auditor for purposes of any such review of records provided that those employees are, or the auditor is, bound by the confidentiality requirements provided for by **Article 11**. Each Party shall be responsible for the costs of its own access and verification activities and shall pay the fees and expenses associated with use of its own third party auditor.

ARTICLE 5
TAXES

5.1 Supplies and Payments Exclusive of Taxes

(a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.

(b) Governmental Charges - Subject to **Section 5.1(c)**:

(i) Emera shall pay or cause to be paid all Taxes on or with respect to the Balancing Services provided by Nalcor to Emera hereunder;

(ii) if Nalcor is required by Applicable Law to remit or pay Taxes which are Emera's responsibility hereunder, Nalcor shall first offset the amount of Taxes so recoverable from other amounts owing by it to Emera under this Agreement, and Emera shall promptly reimburse Nalcor for such Taxes to the extent not so offset;

(iii) if Emera is required by Applicable Law to remit or pay Taxes which are Nalcor's responsibility hereunder, Emera shall first offset the amount of Taxes so recoverable from other amounts owing by it to Nalcor under this Agreement, and Nalcor shall promptly reimburse Emera for such Taxes to the extent not so offset; and

(iv) nothing shall obligate or cause a Party to pay or be liable to pay any Tax for which it is exempt under Applicable Law.

(c) HST - Notwithstanding **Sections 5.1(a)** and **5.1(b)**, the Parties acknowledge and agree that:

(i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from the other Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law;

(ii) if subsection 182(1) of the Excise Tax Act applies to any amount payable by one Party to the other Party, such amount shall first be increased by the percentage determined for "B" in the formula in paragraph 182(1)(a) of the Excise Tax Act, it being the intention of the Parties that such amount be grossed up by the amount of Taxes deemed to otherwise be included in such amount by paragraph 182(1)(a) of the Excise Tax Act;

(iii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other Party such documentation required pursuant to **Section 5.3**; and

(iv) if one Party incurs an expense as agent for the other Party pursuant to this Agreement, that Party shall not claim an input tax credit in respect of any Taxes paid in respect of such expense, and shall obtain and provide all necessary documentation required by the other Party to claim, and shall cooperate with the other Party to assist it in claiming, such input tax credit.

(d) Changes in Taxes - Subject to **Sections 5.1(b)** and **5.1(c)**, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Law.

(e) Income Taxes and HST - For greater certainty:

(i) Emera and its Affiliates are solely responsible for the payment of income taxes and HST payable by Emera and its Affiliates, as the case may be; and

(ii) Nalcor and its Affiliates are solely responsible for the payment of income taxes and HST payable by Nalcor and its Affiliates, as the case may be.

5.2 Determination of Value for Tax Compliance Purposes

(a) Subject to the right of final determination as provided under **Section 5.2(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.

(b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party

shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

5.3 Invoicing

All invoices, as applicable, issued pursuant to **Article 4** shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

(a) the HST registration number of the supplier;

(b) the subtotal of all HST taxable supplies;

(c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and

(d) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.

5.4 Payment and Offset

(a) Subject to **Section 5.4(b)**, Taxes collectable by one Party from the other Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.

(b) A Party may offset amounts of Taxes owing to the other Party under this Agreement against Taxes or other amounts receivable from the other Party pursuant to this Agreement, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

5.5 HST Registration Status and Residency

(a) Nalcor represents and warrants that it is registered for purposes of the HST and that its registration number is 837364611, and undertakes to advise Emera of any change in its HST registration status or number.

(b) Emera represents and warrants that it is registered for purposes of the HST and that its registration number is [*insert Emera or NSPI HST number, as applicable*], and undertakes to advise Nalcor of any change in its HST registration status or number.

(c) Nalcor represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Emera of any change in its residency status.

(d) Emera represents and warrants that it is not a non-resident of Canada for the purposes of the Income Tax Act, and undertakes to advise Nalcor of any change in its residency status.

5.6 Cooperation to Minimize Taxes

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

5.7 Additional Tax Disclosure

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

(a) whether a particular supply is, or is not, subject to HST or to any other Tax which a Party is required to pay to the supplier of such supply;

(b) whether the recipient of consideration or other form of payment under this Agreement is not resident in Canada for the purposes of the Income Tax Act, and, where such recipient is receiving such payment as agent for another Person, whether such other Person is not resident in Canada for the purposes of the Income Tax Act; and

(c) any other fact or circumstance within the knowledge of a Party which the other Party advises the Party, in writing, is relevant to a determination by the other Party of whether it is required to withhold and remit or otherwise pay a Tax to an Authorized Authority or other Tax authority in respect of such supply, consideration or payment.

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

5.8 Prohibited Tax Disclosure

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

5.9 Withholding Tax

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

5.10 Tax Indemnity

Each Party (in this Section referred to as the "**First Party**") shall indemnify and hold harmless the other Party from and against any demand, claim, payment, liability, fine, penalty, cost or expense, including accrued interest thereon, relating to any Taxes for which the First Party is responsible under **Article 5** or relating to any withholding Tax arising on account of the First Party being or becoming a non-resident of Canada for the purposes of the Income Tax Act. Without limiting the generality of the foregoing, and subject to the obligation of the Parties to pay HST pursuant to **Section 5.1(c)**, each Party shall be liable for and defend, protect, release, indemnify and hold the other Party harmless from and against:

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

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

5.11 Additional Tax Indemnity

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

(a) any such amount payable by the First Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and

(b) for greater certainty, this Section shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

5.12 Assignment – Tax Requirements

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

(a) the Person is registered for HST purposes and provides the other Party with its HST registration number in writing prior to such assignment;

(b) if the Person has a tax residency status that is different than the tax residency status of the Party, the Party has obtained the prior written approval of the other Party of the proposed assignment to the Person; and

(c) the Person agrees, in writing, to comply with the provisions of this **Article 5**.

ARTICLE 6
TERM AND TERMINATION

6.1 Term

The term of this Agreement (the "**Term**") shall commence on the Effective Date and shall terminate in accordance with **Section 6.2**.

6.2 Termination of Agreement

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

(a) the 25th anniversary of the In-Service Date;

(b) written agreement of the Parties to terminate; and

(c) upon Nalcor's election, if the In-Service Date has not occurred by the start of the final Contract Year of the Energy Access Agreement.

6.3 Effect of Termination

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

(i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Section 11.1**); and

(ii) neither Party shall have any obligation to the other Party in relation to this Agreement or the termination hereof, except as set out in this **Section 6.3**.

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

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

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

(iii) any rights, liabilities and obligations arising or accruing under the terms of this Agreement prior to the date of termination or which are expressly stated to survive the termination of this Agreement; and

(iv) any other obligations that survive pursuant to **Section 15.13**.

ARTICLE 7
DEFAULT AND REMEDIES

7.1 Emera Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Emera under this Agreement (an "**Emera Default**"):

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

(b) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 7.1(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Emera of Notice thereof from Nalcor, unless the cure reasonably requires a longer period

and Emera is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Nalcor;

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

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

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

7.2 Nalcor Remedies upon Emera Event of Default

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

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

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

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

(b) Losses - Subject to **Article 10**, Nalcor may recover all Losses suffered by Nalcor that are due to an Emera 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 Nalcor to recover any amounts owed to Nalcor by Emera under this Agreement.

(c) Directions Under Dispute Resolution Procedure - The Parties agree that the arbitrator, tribunal or independent expert, as applicable, pursuant to a proceeding under the Dispute Resolution Procedure shall, where the Dispute is of a nature that could reoccur, be directed to include in his, her or its award or determination a methodology and timelines to provide for an expedited and systematic approach to future Disputes of a similar nature.

(d) Equitable Relief - Nothing in this **Article 7** will limit or prevent Nalcor from seeking equitable relief including specific performance, or a declaration to enforce Emera's obligations under this Agreement.

7.3 Nalcor Events of Default

Except to the extent excused by a Forgivable Event, the occurrence of one or more of the following events shall constitute a default by Nalcor under this Agreement (a "**Nalcor Default**"):

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

(b) Nalcor is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 7.3(a)**, and, if the default or breach is capable of being cured, it continues for 30 days after the receipt by Nalcor of Notice thereof from Emera, unless the cure reasonably requires a longer period and Nalcor is diligently pursuing the cure, and it is cured within such longer period of time as is agreed by Emera;

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

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

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

7.4 Emera Remedies upon Nalcor Event of Default

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

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

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

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

(b) Losses - Subject to **Article 10**, Emera may recover all Losses suffered by Emera that are due to a Nalcor Default, including, for the avoidance of doubt, any costs or

expenses (including legal fees and expenses on a solicitor and his or her own client basis) reasonably incurred by Emera to recover any amounts owed to Emera by Nalcor under this Agreement.

7.5 No Cross Default

For greater certainty, this Agreement does not modify any of the obligations of the Parties pursuant to the Formal Agreements and there shall be no cross-defaults between this Agreement and the Formal Agreements.

ARTICLE 8
FORCE MAJEURE

8.1 Force Majeure

If by reason of an event of Force Majeure, a Party is not reasonably able to fulfill an obligation, other than an obligation to pay or spend money, in accordance with the terms of this Agreement, then such Party shall:

(a) forthwith provide Notice to the other Party of such Force Majeure, or orally so notify such other Party (confirmed in writing), which Notice (and any written confirmation of an oral notice) shall provide reasonably full particulars of such Force Majeure;

(b) subject to **Section 2.6**, be relieved from fulfilling such obligation or obligations during the continuance of such Force Majeure but only to the extent of the inability to perform so caused, from and after the occurrence of such Force Majeure;

(c) employ all commercially reasonable means to reduce the consequences of such Force Majeure, including the expenditure of funds that it would not otherwise have been required to expend, if the amount of such expenditure is not commercially unreasonable in the circumstances existing at such time, and provided further that the foregoing shall not be construed as requiring a Party to accede to the demands of its opponents in any strike, lockout or other labour disturbance;

(d) as soon as reasonably possible after such Force Majeure, fulfill or resume fulfilling its obligations hereunder;

(e) provide the other Party with prompt Notice of the cessation or partial cessation of such Force Majeure; and

(f) not be responsible or liable to the other Party for any loss or damage that the other Party may suffer or incur as a result of such Force Majeure.

8.2 Force Majeure of less than 24 Hours Duration

Notwithstanding **Sections 8.1(a)** and **15.1**, Notices given in respect of events of Force Majeure that are reasonably anticipated by the Party with notification responsibility to be of a

duration of less than 24 hours shall be given to an operational representative of the receiving Party. Each Party shall provide by Notice telephone and other electronic contact information to the other for the purposes of this Section prior to the In-Service Date. Either Party may change such contact information from time to time by giving Notice of such change to the other Party in accordance with **Section 15.1**.

ARTICLE 9
LIABILITY AND INDEMNITY

9.1 Nalcor Indemnity

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

9.2 Emera Indemnity

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

9.3 Indemnification Procedure

(a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 9.1** or **9.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 9.3**.

(b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party, the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

(c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 9.3** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.

(d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 9.3(h)**.

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

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

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

(h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 9.3** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

9.4 Insurer Approval

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

ARTICLE 10
LIMITATION OF DAMAGES

10.1 Limitations and Indemnities Effective Regardless of Cause of Damages

Except as expressly set forth in this Agreement, the indemnity obligations and limitations and exclusions of liability set forth in **Article 9** and this **Article 10** shall apply to any and all Claims.

10.2 No Consequential Loss

Notwithstanding any other provision of this Agreement, in no event shall Nalcor or any other member of the Nalcor Group be liable to Emera or any other member of the Emera Group, nor shall Emera or any member of the Emera Group be liable to Nalcor or any member of the Nalcor Group, for a decline in market capitalization or increased cost of capital or borrowing, or for any consequential, incidental, indirect or punitive damages, for any reason with respect to any matter arising out of or relating to this Agreement except that such consequential, incidental, indirect or punitive damages awarded against a member of the Nalcor Group or the Emera Group, as the case may be, with respect to matters relating to this Agreement, in favour of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 10.2**. For the purposes of this **Section 10.2**, lost revenues or profits shall not be considered to be consequential, incidental or indirect damages.

10.3 Liquidated Damages

To the extent that any damages required to be paid under **Article 7** of this Agreement are expressly stated to be liquidated damages, the Parties have computed, estimated and agreed upon the amount of such damages as a reasonable forecast of anticipated or actual Losses in view of the difficulty in calculating or determining the consequences of the harm or the amount of the Losses. The Parties agree that such liquidated damages are a genuine pre-estimate of damages, are not a penalty, and are intended to protect both Parties from uncertainties. The obligation of a Party to pay, and the other Party to accept such amount, as applicable, shall be legally enforceable and binding upon the Parties.

10.4 Insurance Proceeds

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

ARTICLE 11
CONFIDENTIALITY

11.1 **Confidentiality and Restricted Use**

(a) Subject to the terms and conditions of this Agreement, each Receiving Party shall not use the Confidential Information furnished to it by a Disclosing Party or its Representatives for any purpose other than the exercise of its rights and the performance of its obligations under this Agreement (the "**Authorized Purpose**") and shall take reasonable steps to maintain the Confidential Information in confidence, and shall implement adequate and appropriate safeguards to protect the Confidential Information from disclosure or misuse, which will in no event be less rigorous than the Receiving Party uses for protecting its own information of like character.

(b) The Receiving Party shall not disclose the Confidential Information directly or indirectly to any third party without the prior written consent of the Disclosing Party, except as provided in this **Article 11**.

(c) The Receiving Party may disclose Confidential Information to its Representatives, and to its lenders or prospective lenders and their advisors (each a "**Lender Recipient**"), who need to know it for the Authorized Purpose, to be used only for the Authorized Purpose, provided that prior to such disclosure to a Representative or Lender Recipient, each such Representative or Lender Recipient shall:

(i) be informed by the Receiving Party of the confidential nature of such Confidential Information; and

(ii) unless such Representative or Lender Recipient is already bound by a duty of confidentiality to the Receiving Party that is substantially similar to the obligations under this **Article 11**, be directed by the Receiving Party, and such Representative or Lender Recipient shall agree in writing, before receipt of such Confidential Information, to be bound by the obligations of, and to treat such Confidential Information in accordance with the terms and conditions of, this Agreement as if it were a Party hereto.

(d) The Receiving Party shall return and deliver, or cause to be returned and delivered, to the Disclosing Party, or, if so requested in writing by the Disclosing Party, destroy and certify such destruction (such certificate to be signed by an officer of the Receiving Party), all Confidential Information, including copies and abstracts thereof, and all documentation prepared by or in the possession of the Receiving Party or its Representatives relating to the Confidential Information of the Disclosing Party, within 30 days of a written request by the Disclosing Party. Notwithstanding the foregoing, the Receiving Party may retain one copy of such Confidential Information only for administering compliance with this Agreement or if required to retain such information for regulatory purposes, but such copies must be securely maintained and segregated from the other records of the Receiving Party.

(e) The obligations of confidentiality with respect to Confidential Information shall endure for the Term, provided that such obligations with respect to any information that constitutes a Trade Secret shall survive following the Term for such additional period as such information remains a Trade Secret.

(f) Notwithstanding the foregoing, the obligations set forth in this Agreement shall not extend to any information which:

(i) the Receiving Party can establish was known by the Receiving Party or its Representatives prior to the disclosure thereof by the Disclosing Party without a breach of this **Article 11** or another obligation of confidentiality;

(ii) is independently acquired or developed by the Receiving Party or its Representatives without reference to the Confidential Information and without a breach of this **Article 11** or another obligation of confidentiality;

(iii) is legally in the possession of the Receiving Party or its Representative prior to receipt thereof from the Disclosing Party;

(iv) at the time of disclosure was in or thereafter enters the public domain through no fault of the Receiving Party or its Representatives;

(v) is disclosed to the Receiving Party or its Representatives, without restriction and without breach of this **Article 11** or any other obligation of confidentiality, by a third party who has the legal right to make such disclosure; or

(vi) is approved in writing in advance for release by the Disclosing Party.

(g) Each Party agrees that it shall ensure compliance with and be liable for any violation of this **Article 11** by that Party's Representatives and that it shall indemnify and hold harmless the other Parties and their Representatives against any Losses, costs, damages and Claims suffered or incurred by or asserted against such Parties or their Representatives flowing from such violation. This indemnity will survive termination of this Agreement.

(h) Each Receiving Party agrees that each Disclosing Party may be irreparably damaged by any unauthorized disclosure, communication or use of a Disclosing Party's Confidential Information by a Receiving Party or its Representatives and that monetary damages may not be sufficient to remedy any breach by a Receiving Party or its Representatives of any term or provision of this **Article 11** and each Receiving Party further agrees that the Disclosing Party shall be entitled to equitable relief, including injunction and specific performance, in the event of any breach hereof, in addition to any other remedy available at law or in equity.

11.2 Acknowledgments

Each Receiving Party acknowledges and agrees with each Disclosing Party that:

(a) the Disclosing Party and its Representatives do not make any representation or warranty, express or implied, as to the accuracy or completeness of the Disclosing Party's Confidential Information and the Receiving Party shall rely upon its own investigations, due diligence and analyses in evaluating and satisfying itself as to all matters relating to the Confidential Information and the Disclosing Party and its business, affairs and assets or otherwise in any way related to the Authorized Purpose;

(b) the Disclosing Party and its Representatives shall not have any liability to the Receiving Party or its Representatives resulting from any use of or reliance upon the Confidential Information by the Receiving Party or its Representatives;

(c) ownership of and title to Confidential Information of the Disclosing Party shall at all times remain exclusively vested in the Disclosing Party; and

(d) no licence to the Receiving Party under any copyright, trademark, patent or other intellectual property right is either granted or implied by the conveying of Confidential Information to the Receiving Party.

11.3 Disclosures Required by Law

(a) Nalcor and its Affiliates are at all times subject to the provisions of NL legislation as such legislation may be amended or varied, including, but not limited to, the *Access to Information and Protection of Privacy Act* (NL) ("**ATIPPA**"). The Parties acknowledge that Nalcor and its Affiliates may incur disclosure obligations pursuant to the provisions of ATIPPA or other provincial legislation, and disclosure pursuant to such an obligation shall not be a breach of this Agreement.

(b) Nalcor hereby acknowledges and agrees that the Confidential Information disclosed by Emera and its Affiliates is "commercially sensitive information" as defined in the *Energy Corporation Act* (NL) and that the disclosure of the Confidential Information may harm the competitive position of, interfere with the negotiating position of or result in financial loss or harm to Emera or its Affiliates. It is further acknowledged and agreed that Emera has represented to Nalcor that the Confidential Information disclosed by it and its Affiliates is treated consistently in a confidential manner by them and is customarily not provided to their competitors. Therefore, pursuant to Section 5.4(1)(b) of the *Energy Corporation Act*, Nalcor shall refuse to disclose such Confidential Information. Where there is a challenge to such refusal, a review by the Access to Information and Privacy Commissioner for NL, and ultimately the Supreme Court of Newfoundland Trial Division, may occur. To the extent permitted by ATIPPA, Nalcor shall argue against disclosure, support Emera in any submission concerning its entitlement to be represented, and make arguments in support of non-disclosure at each step in this process.

(c) If the Receiving Party or any of its Representatives is required by Applicable Law or requested by any Person pursuant to ATIPPA, or by any Authorized Authority under any circumstances, to disclose any Confidential Information, then, subject to Applicable Law, the Receiving Party may only disclose Confidential Information if, to the extent permitted by Applicable Law, it has:

(i) promptly given Notice to the Disclosing Party of the nature and extent of the request or requirements giving rise to such required or requested disclosure in order to enable the Disclosing Party to seek an appropriate protective order or other remedy;

(ii) obtained a written legal opinion that disclosure is required;

(iii) cooperated with the Disclosing Party in taking any reasonable practicable steps to mitigate the effects of disclosure, and not opposed any action by the Disclosing Party to seek an appropriate protective order or other remedy;

(iv) advised the recipient of the confidentiality of the information being disclosed and used commercially reasonable efforts, in the same manner as it would to protect its own information of like character, to ensure that the information will be afforded confidential treatment;

(v) in the case of a stock exchange announcement, agreed on the wording with the Disclosing Party; and

(vi) disclosed only that portion of the Confidential Information that is legally required to be disclosed.

(d) Any disclosure of Confidential Information pursuant to a legal obligation to make such disclosure shall not be a breach of this Agreement, provided that all relevant obligations under this **Article 11**, including **Section 11.3(c)**, have been met. For the avoidance of doubt, Nalcor and its Affiliates will have no liability to Emera or its Affiliates for any disclosure of Confidential Information that Nalcor or any of its Affiliates is lawfully required to make pursuant to ATIPPA.

(e) In the event that any of the following occur or are reasonably foreseeable and involve or are anticipated to involve the disclosure of Confidential Information of a Party or any of its Affiliates, each of the Parties shall do all things reasonably necessary to secure the confidentiality of such Confidential Information, including applying for court orders of confidentiality in connection with the following:

(i) any proceeding between Nalcor or an Affiliate of Nalcor, on the one hand, and Emera or an Affiliate of Emera, on the other hand; or

(ii) any proceeding between a Receiving Party and another Person.

In connection with the foregoing, every Receiving Party shall consent to such an order of confidentiality upon request of the relevant Disclosing Party. Any Confidential Information that is required to be disclosed but is subject to an order of confidentiality or similar order shall continue to be Confidential Information subject to protection under this Agreement.

11.4 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 12
ASSIGNMENT AND CHANGE OF CONTROL

12.1 Nalcor Assignment Rights

(a) General - Nalcor shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Nalcor Rights**"), without the prior written consent of Emera, which consent may be arbitrarily withheld, except that, at any time and from time to time, Nalcor, without such consent, shall be entitled to assign all or any portion of its interest in the Nalcor Rights to an Affiliate or Affiliates of Nalcor, provided that Nalcor enters into an agreement with Emera substantially in the form attached hereto as **Schedule 1**.

(b) Agreement to be Bound - No assignment may be made of all or any portion of the Nalcor Rights by Nalcor unless Nalcor obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Nalcor Rights.

(c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in a Nalcor Affiliate Assignee that would result in such Nalcor Affiliate Assignee no longer being an Affiliate of Nalcor will be deemed to be an assignment of Nalcor Rights requiring the prior written consent of Emera pursuant to **Section 12.1(a)**, which consent may be arbitrarily withheld.

(d) Non-Permitted Assignment - Any assignment in contravention of this **Section 12.1** will be null and void.

12.2 Emera Assignment Rights

(a) General - Emera shall not be entitled to assign all or any portion of its interest in this Agreement, any Claim or any other agreement relating to any of the foregoing (collectively, the "**Emera Rights**") without the prior written consent of Nalcor, which consent may be arbitrarily withheld, except that, at any time and from time to time, Emera, without such consent, shall be entitled to assign all or any portion of its interest in the Emera Rights to an Affiliate or Affiliates of Emera, provided that

Emera enters into an agreement with Nalcor substantially in the form attached hereto as **Schedule 1**.

(b) Agreement to be Bound - No assignment may be made of all or any portion of the Emera Rights by Emera unless Emera obtains the written agreement of all Persons party to the assignment confirming that such Person shall, from and after the date of the assignment, be bound by the provisions of the assigned Emera Rights.

(c) Change of Control - A change in the direct or indirect shareholders of or shareholdings in an Emera Affiliate Assignee that would result in such Emera Affiliate Assignee no longer being an Affiliate of Emera will be deemed to be an assignment of Emera Rights requiring the prior written consent of Nalcor pursuant to **Section 12.2(a)**, which consent may be arbitrarily withheld.

(d) Non-Permitted Assignment - Any assignment in contravention of this **Section 12.2** will be null and void.

ARTICLE 13
DISPUTE RESOLUTION

13.1 General

(a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 2** (the "**Dispute Resolution Procedure**").

(b) Performance to Continue - Each Party shall continue to perform all of its obligations under this Agreement during any negotiations or dispute resolution proceedings pursuant to this **Article 13**, without prejudice to either Party's rights pursuant to this Agreement.

13.2 Procedure for Inter-Party Claims

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

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

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

(c) Disputed Invoices - This **Section 13.2** does not apply to Disputes relating to invoices pursuant to **Article 4**, which shall be governed by **Section 4.5**.

ARTICLE 14
REPRESENTATIONS, WARRANTIES AND COVENANTS

14.1 **Nalcor Representations and Warranties**

Nalcor represents and warrants to Emera that, as of the Effective Date:

(a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Nalcor and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

(d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

(e) there are [no Legal Proceedings pending or, to its Knowledge, threatened against it] that may materially adversely affect its ability to perform its obligations under this Agreement; [*Or, set out Legal Proceedings, if any*]

(f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings

the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; [*Set out any required Regulatory Approvals*] and

(g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

14.2 **Emera Representations and Warranties**

Emera represents and warrants to Nalcor that, as of the Effective Date:

(a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary corporate action on the part of Emera and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

(d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

(e) there are [no Legal Proceedings pending or, to its Knowledge, threatened against it] that may materially adversely affect its ability to perform its obligations under this Agreement; [*Or, set out Legal Proceedings, if any*]

(f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and (iii) the Regulatory Approvals; [*Set out any required Regulatory Approvals*] and

(g) it does not have any liability or obligation to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement.

ARTICLE 15
MISCELLANEOUS PROVISIONS

15.1 Notices

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

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: Vice President, Strategic Planning and Business Development
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:

[*replace with NSPI contact information, if applicable*]
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 St.
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.

15.2 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 Energy Access Agreement). There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the Formal Agreements.

15.3 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.

15.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

15.5 Announcements

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

15.6 Relationship of the Parties

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

15.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

15.8 Severability

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

15.9 Time of the Essence

Time shall be of the essence.

15.10 Amendments

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

15.11 No Waiver

Any failure or delay of either Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of the Party receiving such consent or approval.

15.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

15.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

15.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure, (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure, and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

15.15 Successors and Assigns

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

15.16 Capacity of Nalcor

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

[Remainder of this page intentionally left blank.]

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

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

NALCOR ENERGY

By: _____
Name:
Title:

_____
Name:

By: _____
Name:
Title:

We have authority to bind the corporation.

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

EMERA INC.

By: _____
Name:
Title:

_____
Name:

By: _____
Name:
Title:

We have authority to bind the company.

[*replace with NSPI signature block, if applicable*]

BALANCING SERVICE AGREEMENT

SCHEDULE 1

FORM OF ASSIGNMENT AGREEMENT

[Prior to finalization, the form of assignment agreement will be attached, substantially in the form of the version that is attached to the Energy Access Agreement as Schedule 6 thereto]

BALANCING SERVICE AGREEMENT

SCHEDULE 2

DISPUTE RESOLUTION PROCEDURE

[Prior to finalization, the Dispute Resolution Procedure will be attached, in the form of the version that is attached to the Energy Access Agreement as Schedule 7 thereto]

ENERGY ACCESS AGREEMENT

SCHEDULE 6

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF [NAME OF] AGREEMENT

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

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

AMONG:

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

- or -

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

- or -

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

- and -

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

- and -

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

- or -

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

- or -

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

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

WHEREAS:

A. Nalcor Energy, Emera Inc. and NSPI entered into an Energy Access Agreement dated April 13, 2015 (the "**Assigned Agreement**") relating to the provision of access to market-priced Energy by Nalcor to NSPI;

B. **[NTD: Need to add any required references to other assigned rights]**;

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

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

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

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

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

"**Assigned Agreement**" has the meaning set forth in the recitals;

"**Assignee**" means _____, an Affiliate of the Assignor;

"**Assignor**" means **[Nalcor/Emera/NSPI or an Affiliate of Nalcor/Emera/NSPI, as applicable]**;

"**Authorized Authority**" means, in relation to any Person, property, transaction or event, any (a) federal, provincial, state, territorial, municipal or local governmental body (whether administrative, legislative, executive or otherwise), (b) agency, authority, commission, instrumentality, regulatory body, court or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, (c) court, arbitrator, commission or body exercising judicial, quasi-judicial, administrative or similar functions, (d) private regulatory entity, self-regulatory organization

or other similar Person, or (e) other body or entity created under the authority of or otherwise subject to the jurisdiction of any of the foregoing, including any stock or other securities exchange, in each case having jurisdiction over such Person, property, transaction or event;

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

"**Consenting Parties**" means [Nalcor/Emera/NSPI or, if applicable as a result of prior assignments, specified Affiliates];

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

"**Dispute Resolution Procedure**" has the meaning set forth in **Section 4.1(a)**;

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

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

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

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

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

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

(a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;

(b) such Party voluntarily institutes proceedings for its winding up, liquidation or dissolution, or to authorize or enter into an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors, or takes action to become bankrupt, or consents to the filing of a bankruptcy application against it, or files an assignment, a proposal, a notice of

intention to make a proposal, an application, or answer or consent seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, including the *Bankruptcy and Insolvency Act* (Canada) and the *Companies' Creditors Arrangement Act* (Canada), or consents to the filing of any such application for a bankruptcy order, or consents to the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the property of such Party or makes an assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

(c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

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

(e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

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

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

"**NL Crown**" means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

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

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

"**Notice**" means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

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

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

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

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

"**Tax**" or "**Taxes**" means any tax, fee, levy, rental, duty, charge, royalty or similar charge including, for greater certainty, any federal, state, provincial, municipal, local, aboriginal, foreign or any other assessment, governmental charge, imposition or tariff (other than a tariff or fees in respect of electricity transmission services) wherever imposed, assessed or collected, and whether based on or measured by gross receipts, income, profits, sales, use and occupation or otherwise, and including any income tax, capital gains tax, payroll tax, fuel tax, capital tax, goods and services tax, harmonized sales tax, value added tax, sales tax, withholding tax, property tax, business tax, ad valorem tax, transfer tax, franchise tax or excise tax, together with all interest, penalties, fines or additions imposed, assessed or collected with respect to any such amounts;

"**third party**" means any Person that does not Control, is not Controlled by and is not under common Control with the applicable Party; and

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

1.2 Construction of Agreement

(a) Interpretation Not Affected by Headings, etc - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement. Unless otherwise indicated, all references to an "**Article**" or "**Section**" followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms "**this Agreement**", "**hereof**", "**herein**", "**hereby**", "**hereunder**" and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.

(b) Singular/Plural; Derivatives - Whenever the singular or masculine or neuter is used in this Agreement, it shall be interpreted as meaning the plural or feminine or body politic or corporate, and vice versa, as the context requires. Where a term is defined herein, a capitalized derivative of such term has a corresponding meaning unless the context otherwise requires.

(c) "Including" - The word "including", when used in this Agreement, means "including without limitation".

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

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

(f) Calculation of Time - Where, in this Agreement, a period of time is specified or calculated from or after a date or event, such period is to be calculated excluding

such date or the date on which such event occurs, as the case may be, and including the date on which the period ends.

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

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

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

ARTICLE 2
ASSIGNMENT

2.1 Assignment to Affiliate

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Agreement and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Agreement and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Agreement as of the Effective Date and covenants and agrees with the Assignor and each of the Consenting Parties to assume the covenants and obligations of the Assignor under the Assigned Agreement. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Agreement arising on and in respect of matters occurring after the Effective Date.

2.3 Limitations on Assignment / Assumption

The Assignor reserves to itself and does not assign to the Assignee, and the Assignee does not assume from the Assignor the following rights and/or obligations:

(a) ....

(b) ....

2.4 Confirmation of Status of Assigned Agreement

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, any of the Consenting Parties are in default of any of their obligations under the Assigned Agreement. The Consenting Parties each hereby confirms to the Assignee that neither it nor, to its Knowledge, the Assignor is in default of any of its obligations under the Assigned Agreement.

2.5 Assignor to Remain Liable

Notwithstanding the foregoing, [Nalcor/Emera/NSPI] expressly acknowledges and agrees that it shall remain liable to each of the Consenting Parties as a primary obligor under the Assigned Agreement to observe and perform all of the conditions and obligations in the Assigned Agreement which the Assignor, and as of the Effective Date the Assignee, are bound to observe and perform.

2.6 [Nalcor/Emera/NSPI] Defaults

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

(a) [Nalcor/Emera/NSPI] ceases to carry on all or substantially all of its business or, except as permitted under the Assigned Agreement, transfers all or substantially all of its undertaking and assets; or

(b) an Insolvency Event occurs with respect to [Nalcor/Emera/NSPI].

2.7 Acknowledgement of Consenting Parties

The Consenting Parties each acknowledge, consent to and accept the within assignment and assumption of the Assigned Agreement, subject to the terms and conditions herein and confirms to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Agreement.

2.8 Supplies and Payments Exclusive of Taxes

(a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.

(b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:

(i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments

or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and

(ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.10**.

2.9 Determination of Value for Tax Compliance Purposes

(a) Subject to the right of final determination as provided under **Section 2.9(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.

(b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.10 Invoicing

All invoices issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

(a) the HST registration number of the supplier;

(b) the subtotal of all HST taxable supplies;

(c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and

(d) a subtotal of any amounts charged for any "exempt" or "zero-rated" supplies as defined in Part IX of the Excise Tax Act.

2.11 Payment and Offset

(a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.

(b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.12 HST Registration Status

(a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

(b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

2.13 [●]

[Insert any provision required by the Assigned Agreement to be included.]

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Assignor and Assignee Representations and Warranties

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to each of the Consenting Parties that, as of the Effective Date:

(a) it is duly organized and validly existing under the Applicable Law of the jurisdiction of its formation and is qualified to conduct its business to the extent necessary in each jurisdiction in which it will perform its obligations under this Agreement;

(b) the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary [corporate] action on its part and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Applicable Law;

(c) this Agreement has been duly executed and delivered on its behalf by its appropriate officers and constitutes its legally valid and binding obligation enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and (ii) general principles of equity whether considered in a proceeding in equity or at law;

(d) no Insolvency Event has occurred, is pending or being contemplated by it or, to its Knowledge, threatened against it;

(e) there are [no Legal Proceedings **NTD: or set out Legal Proceedings, if any]** pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

(f) no consent or other approval, order, authorization or action by, or filing with, any Person is required to be made or obtained by such Party for such Party's lawful execution, delivery and performance of this Agreement, except for (i) such consents, approvals, authorizations, actions and filings that have been made or obtained prior to the date hereof, (ii) such consents, approvals, authorizations, actions and filings the failure of which would not have, or could not reasonably be expected to have, a material adverse effect on such Party's ability to perform its obligations under this Agreement and **[NTD: set out any required Regulatory Approvals]**;

(g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and

(h) the Assignee is an Affiliate of the Assignor.

ARTICLE 4
DISPUTE RESOLUTION PROCEDURE

4.1 General

(a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in Schedule "7" to the Assigned Agreement (the "**Dispute Resolution Procedure**").

(b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Assigned Agreement]**

ARTICLE 5
MISCELLANEOUS PROVISIONS

5.1 Notices

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

To Assignor:

[•]

To Assignee:

[•]

To Consenting Parties:

[•]

[•]

[To Nalcor/Emera/NSPI:]

[•]

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

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

5.3 Counterparts

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

5.4 Expenses of Parties

Except as otherwise provided herein, each Party shall bear its own costs and expenses in connection with all matters relating to this Agreement, including the costs and expenses of its legal, tax, technical and other advisors.

5.5 Announcements

No announcement with respect to this Agreement shall be made by any Party without the prior approval of the other Parties. The foregoing shall not apply to any announcement

by a Party required in order to comply with Applicable Law; provided that such Party consults with the other Parties before making any such announcement and gives due consideration to the views of the other Parties with respect thereto. The Parties shall use reasonable efforts to agree on the text of any proposed announcement.

5.6 Relationship of the Parties

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

5.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

5.8 Severability

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

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

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

5.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the

obligations of the Party giving such consent or approval or otherwise reduce the obligations of a Party receiving such consent or approval.

5.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure; (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

5.15 Successors and Assigns

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

5.16 [Capacity of Nalcor

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown. **NTD: Include if Nalcor signing Agreement.]**

[Remainder of this page intentionally left blank.]

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

Assignor

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

Assignee

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

[First Consenting Party]

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

[Second Consenting Party]

By: _____
Name:
Title:

By: _____
Name:
Title:
I/We have authority to bind the
[company]/[corporation]

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

ENERGY ACCESS AGREEMENT

SCHEDULE 7

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 Article 14 of the Agreement.

2.3 Interim Measures

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

2.4 Parties to Proceedings

(a) For the purposes of this Schedule and any Dispute submitted for resolution hereunder, any of Nalcor Energy and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively, and any of Emera Inc. and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively. When applicable, in this Schedule references to a "Party" are to either such collective, and references to the "Parties" are to both such collectives.

(b) Notwithstanding **Section 2.4(a)**, (i) any Notice given by Nalcor or an Affiliate of Nalcor in connection with this Dispute Resolution Procedure shall be given to Emera Inc., if it is a Party, and to all Affiliates of Emera Inc. that are Parties, and (ii) any Notice given by Emera or an Affiliate of Emera in connection with this Dispute Resolution Procedure shall be given to Nalcor Energy, if it is a Party, and to all Affiliates of Nalcor Energy that are Parties.

2.5 Mediator or Arbitrator as Witness

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

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

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

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

3.2 Reservation of Rights

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

3.3 Failure of Negotiations

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

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

(a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the "**Requesting Party**"), by Notice to the other Party given within five Business Days after expiry of the period set out in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a "**Mediation Notice**") containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.

(b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.

(c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:

(i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;

(ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;

(iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;

(iv) either Party gives Notice to the other Party that it terminates the mediation;

(v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;

(vi) **Section 4.3(d)** applies; or

(vii) the Dispute is settled as provided in **Section 4.4**.

(d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the "**Mediation Response**") to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 Appointment of Mediator

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

4.3 Mediation Process

(a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.

(b) The location of the mediation will be St. John's, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.

(c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.

(d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.

(e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally

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

4.4 **Reservation of Rights**

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

SECTION 5 – ARBITRATION PROCEDURE

5.1 **Submission to Binding Arbitration**

(a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3:**

(i) either Party (the "**Notifying Party**") may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Party (the "**Notified Party**") of such submission (an "**Arbitration Notice**"); or

(ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, to proceed with resolution of the General Dispute pursuant to Section **2.1(b)(ii)(B)**.

(b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.

(c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.

(d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.

(e) Notwithstanding **Sections 5.1(b)**, **5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.

(f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by

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

5.2 **Provisions Relating to the Arbitration Act and the Code**

(a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.

(b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.

(c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the "arbitration agreement".

(d) A reference in the Code to "a court or other authority specified in article 6", will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.

(e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.

(f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.

(g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.

(h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have both agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.

(i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 **Appointment of Tribunal**

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

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

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

5.4 Arbitration by Single Arbitrator

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

5.5 Procedure

(a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.

(b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.

(c) If the Parties initiate multiple arbitration proceedings under the Agreement and other Formal Agreements, the subject matters of which are related by common questions of law or fact and which could result in conflicting awards or obligations, then all such proceedings may, with the written consent of all Parties in all such proceedings, be consolidated into a single arbitration proceeding.

(d) The Parties may agree as to the manner in which the Tribunal shall promptly hear witnesses and arguments, review documents and otherwise conduct the arbitration. Failing such agreement within 20 Business Days from the date of selection or appointment of the Tribunal, the Tribunal shall promptly and expeditiously conduct the arbitration proceedings in accordance with the Code. The Parties intend that the arbitration hearing should commence as soon as reasonably practicable following the appointment of the Tribunal.

(e) Nothing in this **Section 5** will prevent either Party from applying to a court of competent jurisdiction pending final disposition of the arbitration proceeding for such relief as may be necessary to assist the arbitration process, to ensure that the arbitration is carried out in accordance with the Arbitration Procedure, or to prevent manifestly unfair or unequal treatment of either Party.

(f) In no event will the Tribunal have the jurisdiction to amend or vary the terms of this Schedule or of the Code.

5.6 Awards

(a) The arbitration award shall be given in writing, will be final and binding on the Parties, and will not be subject to any appeal.

(b) Each Party shall bear its own costs in relation to the arbitration, but the Parties shall equally bear the common costs of the Arbitration, including the costs of or attributable to the Tribunal and the facilities used for the arbitration.

(c) No arbitration award issued hereunder will expand or increase the liabilities, obligations or remedies of the Parties beyond those permitted by the Agreement.

(d) Judgment upon the arbitration award may be entered in any court having jurisdiction, or application may be made to such court for a judicial recognition of the arbitration award or an order of enforcement thereof, as the case may be.

(e) The amount of the arbitration award including costs will bear interest at the Prime Rate plus three percent per annum, or such other rate, and from such date, as determined by the Tribunal, until the amount of the arbitration award, costs and interest thereon is paid in full.

(f) Subject to **Section 5.5(e)**, the Parties agree that arbitration conducted pursuant to this Arbitration Procedure will be the final and exclusive forum for the resolution of General Disputes.

5.7 Settlement

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

SECTION 6 – EXPERT DETERMINATION PROCEDURE

6.1 Referral for Expert Determination

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

6.2 Qualifications of Independent Expert

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

(a) independent of each of the Parties;

(b) of national or international standing;

(c) well qualified by education, technical training and experience, and hold the appropriate professional qualifications, to determine the matters in issue in the Specified Dispute; and

(d) impartial and have no interest or obligation in conflict with the task to be performed as an Independent Expert for the Parties. Without limiting the generality of the foregoing, a conflict will be deemed to exist, unless otherwise agreed in writing by the Parties, if the Independent Expert at any time previously performed work in connection with matters covered by any of the Formal Agreements, or during the preceding three years performed any other work for either of the Parties or any of their Affiliates. Any direct or beneficial equity interest the Independent Expert has in one or more of the Parties or their Affiliates, or *vice versa*, shall be declared by each Party and the Independent Expert prior to the Independent Expert being retained.

6.3 **Selection of the Independent Expert**

(a) Within 10 Business Days after delivery of the Referral Notice, each Party shall deliver to the other Party, in a simultaneous exchange, a list of the names of five Persons (ranked 1 - 5 in order of preference, 5 being that Party's first preference) who are acceptable to the Party to act as the Independent Expert. If one Person only is named in both lists, that Person shall be the Independent Expert to determine the Specified Dispute. If more than one Person is named in both lists, the Person with the highest total numerical ranking, determined by adding the rankings from both lists, shall be the Independent Expert to determine the Specified Dispute. In the event of a tie in the rankings, the Person to be the Independent Expert shall be selected by lot from among those of highest equal rank.

(b) If the Parties fail to select an Independent Expert from the initial lists provided pursuant to **Section 6.3(a)**, the process under **Section 6.3(a)** shall be repeated with a second list of five names from each Party, except that the Parties shall exchange lists within five Business Days after the end of the 10 Business Day period under **Section 6.3(a)**.

(c) If the Parties fail to select an Independent Expert pursuant to **Section 6.3(a)** or **6.3(b)** or otherwise within 15 Business Days after the Referral Notice is given, within a further period of five Business Days after the end of such 15 day period the Parties shall jointly request the President of ADR Chambers in Toronto, Ontario or his or her designate (the "**Delegate**") to appoint the Independent Expert from a list submitted by the Parties with the request. Each Party may nominate up to three proposed Independent Experts for inclusion on the list. The Parties shall not advise the Delegate which Party nominated a particular nominee. Each Party shall be responsible for one-half of the costs of the Delegate.

6.4 Terms of Reference

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

6.5 Information Provided to Independent Expert

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

(a) a copy of the Agreement, including the Schedules;

(b) copies of or full access to all documents relevant to the Specified Dispute to be determined by the Independent Expert; and

(c) other data and reports as may be mutually agreed by the Parties.

6.6 Dispute Context

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

6.7 No *ex parte* Communication

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

(a) with the approval of both Parties;

(b) as provided by this **Section 6**; or

(c) to address strictly administrative matters.

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

6.8 Initial Meeting and Joint Presentations by the Parties

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

6.9 Written Submissions and Responses

(a) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after the Initial Meeting, each Party shall provide to the Independent Expert a written submission (a "**Submission**") respecting its interpretation and evaluation of the Specified Dispute.

(b) Within the time specified at the Initial Meeting, but in any event not later than 20 Business Days after receipt of the other Party's Submission, each Party shall have the opportunity to provide comments on the other Party's Submission by written submissions (a "**Response**") provided to the Independent Expert and the other Party.

(c) The Parties shall provide any Information deemed necessary by the Independent Expert to complete the evaluation required pursuant to this **Section 6**.

(d) A Party that fails to submit a Submission or a Response to the Independent Expert within the time allowed by this **Section 6.9** will be deemed to have waived its right to make a Submission or Response, as the case may be.

6.10 Independent Expert Clarifications

(a) Following receipt of the Submissions and Responses, the Independent Expert may, at its discretion, seek any number of clarifications with respect to any aspect of either Party's Submission or Response. Such requests for clarifications shall be made by the Independent Expert in writing and the clarifications by the Parties shall be made in writing as requested by the Independent Expert, provided that the other Party shall be provided with a copy of such requests and clarifications.

(b) The purpose of such clarifications will be to allow the Independent Expert to fully understand the technical and/or financial basis and methodologies used in the preparation of the Submission and Response of each Party, it being understood that each Party's Submission and Response will be the primary basis upon which the Independent Expert shall make its determination.

(c) All requests for clarifications and all questions in relation thereto will be initiated or posed exclusively by the Independent Expert to the Party from whom clarification is

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

6.11 Method of Evaluation

(a) The Independent Expert's assessment shall include the method of evaluation elements set out in the Dispute Context.

(b) The Independent Expert's assessment, including its economic model, cash flows and analysis, if any, will be made available to the Parties.

6.12 Decision and Presentation of Report

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

6.13 Costs of Expert Determination

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

6.14 Effect of Determination

(a) The Independent Expert's determination pursuant to this **Section 6** will be final and binding upon the Parties and not reviewable by a court for any reason whatsoever.

(b) The Independent Expert is not an arbitrator of the Specified Dispute and is deemed not to be acting in an arbitral capacity. The Independent Expert's determination pursuant to this **Section 6** is not an arbitration under the Arbitration Act or any other federal or provincial legislation.

6.15 Settlement

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

Appendix A
to Dispute Resolution Procedure

COMMERCIAL ARBITRATION CODE

Appendix A

COMMERCIAL ARBITRATION CODE

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

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

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

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

CHAPTER I. GENERAL PROVISIONS

ARTICLE 1
SCOPE OF APPLICATION

(1) This *Code* applies to commercial arbitration, subject to any agreement in force between *Canada* and any other State or States.

(2) The provisions of this *Code*, except articles 8, 9, 35 and 36, apply only if the place of arbitration is in *Canada*.

(3) This *Code* shall not affect any other law of *Parliament* by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this *Code*.

ARTICLE 2
DEFINITIONS AND RULES OF INTERPRETATION

For the purposes of this *Code:*

(a) "arbitration" means any arbitration whether or not administered by a permanent arbitral institution;

(b) "arbitral tribunal" means a sole arbitrator or a panel of arbitrators;

(c) "court" means a body or organ of the judicial system of a State;

(d) where a provision of this *Code*, except article 28, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination;

(e) where a provision of this *Code* refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement;

(f) where a provision of this *Code*, other than in articles 25(a) and 32(2)(a), refers to a claim, it also applies to a counterclaim, and where it refers to a defence, it also applies to a defence to such counter-claim.

ARTICLE 3
RECEIPT OF WRITTEN COMMUNICATIONS

(1) Unless otherwise agreed by the parties:

(a) any written communication is deemed to have been received if it is delivered to the addressee personally or if it is delivered at his place of business, habitual residence or mailing address; if none of these can be found after making a reasonable inquiry, a written communication is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means which provides a record of the attempt to deliver it;

(b) the communication is deemed to have been received on the day it is so delivered.

(2) The provisions of this article do not apply to communications in court proceedings.

ARTICLE 4
WAIVER OF RIGHT TO OBJECT

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

ARTICLE 5
EXTENT OF COURT INTERVENTION

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

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

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

CHAPTER II. ARBITRATION AGREEMENT

ARTICLE 7
DEFINITION AND FORM OF ARBITRATION AGREEMENT

(1) "Arbitration agreement" is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(2) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

ARTICLE 8
ARBITRATION AGREEMENT AND SUBSTANTIVE CLAIM BEFORE COURT

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

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

ARTICLE 9
ARBITRATION AGREEMENT AND INTERIM MEASURES BY COURT

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

CHAPTER III. COMPOSITION OF ARBITRAL TRIBUNAL

ARTICLE 10
NUMBER OF ARBITRATORS

(1) The parties are free to determine the number of arbitrators.

(2) Failing such determination, the number of arbitrators shall be three.

ARTICLE 11
APPOINTMENT OF ARBITRATORS

(1) No person shall be precluded by reason of his nationality from acting as an arbitrator, unless otherwise agreed by the parties.

(2) The parties are free to agree on a procedure of appointing the arbitrator or arbitrators, subject to the provisions of paragraphs (4) and (5) of this article.

(3) Failing such agreement,

(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;

(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

(4) Where, under an appointment procedure agreed upon by the parties,

(c) a party fails to act as required under such procedure, or

(d) the parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure, or

(e) a third party, including an institution, fails to perform any function entrusted to it under such procedure,

any party may request the court or other authority specified in article 6 to take the necessary measure, unless the agreement on the appointment procedure provides other means for securing the appointment.

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

ARTICLE 12
GROUNDS FOR CHALLENGE

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

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

ARTICLE 13
CHALLENGE PROCEDURE

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

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

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

ARTICLE 14
FAILURE OR IMPOSSIBILITY TO ACT

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

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

ARTICLE 15
APPOINTMENT OF SUBSTITUTE ARBITRATOR

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

CHAPTER IV. JURISDICTION OF ARBITRAL TRIBUNAL

ARTICLE 16
COMPETENCE OF ARBITRAL TRIBUNAL TO RULE ON ITS JURISDICTION

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

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

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

ARTICLE 17
POWER OF ARBITRAL TRIBUNAL TO ORDER INTERIM MEASURES

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

CHAPTER V. CONDUCT OF ARBITRAL PROCEEDINGS

ARTICLE 18
EQUAL TREATMENT OF PARTIES

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

ARTICLE 19
DETERMINATION OF RULES OF PROCEDURE

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

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

ARTICLE 20
PLACE OF ARBITRATION

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

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

ARTICLE 21
COMMENCEMENT OF ARBITRAL PROCEEDINGS

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

ARTICLE 22
LANGUAGE

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

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

ARTICLE 23
STATEMENTS OF CLAIM AND DEFENCE

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

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

ARTICLE 24
HEARINGS AND WRITTEN PROCEEDINGS

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

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

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

ARTICLE 25
DEFAULT OF A PARTY

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

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

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

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

ARTICLE 26
EXPERT APPOINTED BY ARBITRAL TRIBUNAL

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

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

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

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

ARTICLE 27
COURT ASSISTANCE IN TAKING EVIDENCE

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

CHAPTER VI. MAKING OF AWARD AND TERMINATION OF PROCEEDINGS

ARTICLE 28
RULES APPLICABLE TO SUBSTANCE OF DISPUTE

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

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

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

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

ARTICLE 29
DECISION-MAKING BY PANEL OF ARBITRATORS

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

ARTICLE 30
SETTLEMENT

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

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

ARTICLE 31
FORM AND CONTENTS OF AWARD

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

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

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

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

ARTICLE 32
TERMINATION OF PROCEEDINGS

(1) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with paragraph (2) of this article.

(2) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings when:

(a) the claimant withdraws his claim, unless the respondent objects thereto and the arbitral tribunal recognizes a legitimate interest on his part in obtaining a final settlement of the dispute;

(b) the parties agree on the termination of the proceedings;

(c) the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(3) The mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings, subject to the provisions of articles 33 and 34(4).

ARTICLE 33
CORRECTION AND INTERPRETATION OF AWARD; ADDITIONAL AWARD

(1) Within thirty days of receipt of the award, unless another period of time has been agreed upon by the parties:

(a) a party, with notice to the other party, may request the arbitral tribunal to correct in the award any errors in computation, any clerical or typographical errors or any errors of similar nature;

(b) if so agreed by the parties, a party, with notice to the other party, may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

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

(2) The arbitral tribunal may correct any error of the type referred to in paragraph (1)(a) of this article on its own initiative within thirty days of the date of the award.

(3) Unless otherwise agreed by the parties, a party, with notice to the other party, may request, within thirty days of receipt of the award, the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within sixty days.

(4) The arbitral tribunal may extend, if necessary, the period of time within which it shall make a correction, interpretation or an additional award under paragraph (1) or (3) of this article.

(5) The provisions of article 31 shall apply to a correction or interpretation of the award or to an additional award.

CHAPTER VII. RECOURSE AGAINST AWARD

ARTICLE 34
APPLICATION FOR SETTING ASIDE AS EXCLUSIVE RECOURSE AGAINST ARBITRAL AWARD

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside in accordance with paragraphs (2) and (3) of this article.

(2) An arbitral award may be set aside by the court specified in article 6 only if:

(a) the party making the application furnishes proof that:

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

(ii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

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

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this *Code* from which the parties cannot derogate, or, failing such agreement, was not in accordance with this *Code;* or

(b) the court finds that:

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

(ii) the award is in conflict with the public policy of *Canada.*

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the award or, if a request had been made under article 33, from the date on which that request had been disposed of by the arbitral tribunal.

(4) The court, when asked to set aside an award, may, where appropriate and so requested by a party, suspend the setting aside proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the arbitral tribunal's opinion will eliminate the grounds for setting aside.

CHAPTER VIII. RECOGNITION AND ENFORCEMENT OF AWARDS

ARTICLE 35
RECOGNITION AND ENFORCEMENT

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

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

ARTICLE 36
GROUNDS FOR REFUSING RECOGNITION OR ENFORCEMENT

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

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

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

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

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

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

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

(b) if the court finds that:

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

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

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