NALCOR ENERGY

and

EMERA INC.

AMENDED AND RESTATED
NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

July 31, 2014

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Schedules:

AMENDED AND RESTATED
NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

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

B E T W E E N:

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

- and -

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

WHEREAS:

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

B. this Agreement is one of the Formal Agreements and provides for the provision of NS Transmission Rights by Emera to Nalcor during the Term;

C. on July 31, 2012 Nalcor and Emera entered into the original version of this Agreement (the "**Original NSTUA**");

D. contemporaneously with the execution and delivery of this Agreement, Nalcor and Emera are entering into an amended and restated Maritime Link Joint Development Agreement (the "**A&R ML-JDA**"); and

E. Nalcor and Emera wish to amend and restate the Original NSTUA to update certain provisions and make other amendments for consistency with the A&R ML-JDA;

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

ARTICLE 1
INTERPRETATION

1.1 Definitions

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

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

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

"**AFUDC**" has the meaning set forth in the ML-JDA;

"**Actual Capital Costs**" has the meaning set forth in the ML-JDA;

"Additional Allowed Transmission Capacity" has the meaning set forth in **Section 2.3(b)(v)(B)(1)**;

"**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;

"**Ancillary Services**" has the meaning set forth in the NS OATT;

"**Anniversary Date**" means the date of the first day of the Supplemental Term and the equivalent date in each successive calendar year during the Supplemental Term;

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

"**Applicable Tariff Charges**" means the payments to be made by Nalcor to Emera in respect of the transmission by Emera of Confirmed NS-NTQ Energy, as provided for in **Section 2.3(b)(vii)** in respect of the Initial Term and any Subsequent Term;

"**Applicable Supplemental Term Tariff Charges**" means the payments to be made by Nalcor to Emera in respect of the transmission service to be provided by Emera to Nalcor during the Supplemental Term, as provided for in Section **2.3(b)(viii)**;

"**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;

"**Back-up Capacity**" has the meaning set forth in **Section 2.10(a)**;

"**Back-up Capacity Tariff**" has the meaning set forth in **Section 2.10(b)**;

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

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

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

"**Claiming Party**" has the meaning set forth in **Section 10.2(a)**;

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

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

"**Confirmed NS-NTQ Energy**" has the meaning set forth in Step 5 of Section 3.1 of the Scheduling Protocol;

"**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);

"**Curtailment**" has the meaning set forth in the NS OATT, and for greater certainty excludes interruptions made by the NS System Operator solely for economic reasons;

"**Daily Proxy Rate**" means the rate calculated by dividing the firm On-Peak Daily delivery charge for Reserved Capacity, as provided for in Schedule 7 of the NS OATT, expressed in $/MW, and in effect from time to time, by 24 hours, which will be a charge, expressed in $/MWh. As of the Effective Date, the Daily Proxy Rate is calculated to be $6.89/MWh. The total Applicable Tariff Charge in any week shall not exceed the Weekly delivery charge for Reserved Capacity, as provided for in Schedule 7 of the NS OATT, expressed in $/MW, times the highest amount of Reserved Capacity associated with the Confirmed NS-NTQ Energy (in MW) in any day during such week;

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

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

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

"**Dispute Resolution Procedure**" has the meaning set forth in **Section 10.1(a)**;

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

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

"**Emera Affiliate Assignee**" means an Affiliate of Emera to which all or any portion of the Emera Rights have been assigned in accordance with **Section 14.2**, 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 8.1**;

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

"**Emera Firm Point-to-Point Transmission Service**" means the 330 MW Long Term Firm Point-to-Point Transmission Service from the Delivery Point to the NS-NB border to be obtained by Emera pursuant to the NS OATT;

"**Emera Group**" has the meaning set forth in **Section 11.1**;

"**Emera Rights**" has the meaning set forth in **Section 14.2(a)**;

"**Energy**" means electrical energy measured and expressed in MWh;

"**Energy and Capacity Agreement**" or "**ECA**" means the agreement dated July 31, 2012 between Nalcor and Emera relating to the sale and delivery of the Nova Scotia Block;

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

"**Extended Force Majeure Period**" has the meaning set forth in **Section 6.3(a)(ii)**;

"**Financing Costs**" has the meaning set forth in the ML-JDA;

"**Firm Point-to-Point Transmission Service**" has the meaning set forth in the NS OATT;

"**First Commercial Power**" means "First Commercial Power" as set forth in the Energy and Capacity Agreement;

"**Force Majeure**" has the meaning of "event of Force Majeure" set forth in the NS OATT, subject to the qualifications set forth in **Section 9.1(a)**;

"**Forgivable Event**" means a Force Majeure, a Planned Maintenance Period, a Safety Event or an action required to be taken by a Party to comply with the requirements of Good Utility Practice;

"**Formal Agreements**" means the agreements listed in **Schedule 1**;

"**Forward Schedule**" has the meaning set forth in **Section 2.3(b)(i)**;

"**Forward Supplemental Term Schedule**" means a 24 month forward schedule that provides for each of the following in respect of each month covered by the schedule: (i) the total NS-NTQ nominated by Nalcor to be transmitted during the month; (ii) a good faith estimate of the maximum transmission Capacity (in MW) expected by Nalcor to be required by it in any Peak Hour during the month; and (iii) a good faith estimate of the maximum transmission Capacity (in MW) expected by Nalcor to be required by it in any non-Peak Hour during the month. In the annual submission of the Forward Monthly Schedule, Nalcor cannot change the previous submitted schedule but shall add the new second year to the previous year's Forward Monthly Schedule;

"**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;

"**Government Action**" means a measure or measures of any nature or kind, taken directly or indirectly by NS after Sanction by Nalcor, the effect of which is to cause Nalcor to be deprived of the delivery or enjoyment of, or access to, the NS Transmission Rights, and includes a measure or measures which:

(a) materially increases the costs that Nalcor could reasonably be expected to incur under or related to this Agreement; or

(b) materially diminishes the value to Nalcor of the NS Transmission Rights.

Government Action shall not include a measure or measures taken by NS which is:

(i) consented to in writing by Nalcor; or

(ii) a Government Action of General Application.

"**Government Action of General Application**" means a non-discriminatory measure or measures of general application that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment; such measures include an action under current or future legislation;

"**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);

"**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);

"**Indemnified Party**" has the meaning set forth in **Section 11.4(a)**;

"**Indemnitor**" has the meaning set forth in **Section 11.4(a)**;

"**Initial Term**" means the period of time commencing at First Commercial Power and ending on the 35th anniversary of First Commercial Power or at such later time as the Initial Term may be extended pursuant to Section 8.5 of the ECA;

"**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 NSPI and NLH related to the interconnected operations of the NS and NL bulk energy systems;

"**Inter-Provincial Agreement**" means the agreement dated July 31, 2012 between Nalcor, Emera, NS and NL setting forth the commitments of NS and NL in respect of Government Action;

"**Interruptible Customers**" means customers receiving Energy service under a tariff approved by the UARB which permits interruption of such service by NSPI;

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

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

"**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;

"**Last Year's Schedule**" refers to a 12 month schedule to be finalized at the end of the Initial Term that corresponds, at Nalcor's option, to either the 34th or the 35th year of the Initial Term (unless those years are not typical of the total Energy transmitted by Emera on Nalcor's behalf pursuant to this Agreement in each month during the Initial Term) that sets out the total Energy quantities (in MWh) that were transmitted by Emera on Nalcor's behalf pursuant to this Agreement in each of the applicable 12 months. If neither the 34th nor the 35th years of the Initial Term establish typical monthly quantities of total Energy transmissions, then the Parties shall determine the appropriate monthly Energy quantities to be set out for each month in the Last Year's Schedule on the basis of the typical monthly Energy transmissions during the Initial Term. **Section 1.2(m)(i)** applies to such determination;

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

"**Long-Term Firm Point-to-Point Transmission Service**" has the meaning set forth in the NS OATT;

"**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;

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

"**MEPCO Transmission Rights Agreement**" means the agreement dated July 31, 2012 between Nalcor and Emera providing for the use by Nalcor of the MEPCO Transmission Rights;

"**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 Design Capacity**" means, at the A&R Effective Date, the "Design Capacity", as defined in the ML-JDA, in respect of the directional flow of Energy from NL to NS over the ML up to a maximum Capacity of 500 MW;

"**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 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 and 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 that are not also a System Operator, load serving entities, loads, holders of Energy derivatives, generators and other power suppliers and their designated agents;

"**Monthly Proxy Rate**" means the rate calculated by dividing the firm Monthly delivery charge for Reserved Capacity, as provided for in Schedule 7 of the NS OATT, expressed in $/MW, and in effect from time to time, by 730 hours, which will be a charge expressed in $/MWh. As of the Effective Date, the Monthly Proxy Rate is calculated to be $4.91/MWh;

"**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;

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

"**NB-Maine Border**" means the point of interconnection in Canada closest to the border of New Brunswick and Maine where the NB Transmission System connects to the bulk energy transmission system of Maine Electric Power Company, Inc. or its successor;

"**NB OATT**" means the New Brunswick System Operator Open Access Transmission Tariff as approved by the New Brunswick Energy and Utilities Board, as it may be amended, restated, reissued or replaced from time to time;

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

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

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

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

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

"**NS-NB Border**" means a point of interconnection located at the border of NS and NB where the NS Transmission System connects to the NB Transmission System, as such interconnections may be modified from time to time;

"**NS Nominated Transmission Quantity**" or "**NS-NTQ**" has the meaning set forth in **Schedule 2**;

"**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;

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

"**NS Transmission Rights**" means the rights of Nalcor to receive transmission service on the NS Transmission System as provided for in this Agreement, including the Transmission Facilitation Service and the rights of Nalcor as provided for under **Section 2.5**;

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

"**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 14.1**, 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 8.6**;

"**Nalcor Group**" has the meaning set forth in **Section 11.2**;

"**Nalcor Maximum Transmission Capacity Level**" has the meaning set forth in **Section 2.1(a)**;

"**Nalcor Rights**" has the meaning set forth in **Section 14.1(a)**;

"**Native Load Customers**" has the meaning set forth in the NS OATT;

"**New Brunswick Transmission Utilization Agreement**" or "**NBTUA**" means the agreement dated July 31, 2012 between Nalcor and Emera providing for the use of Transmission Rights in NB;

"**New Taxes**" means:

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

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

"**Non-Firm Point-to-Point Transmission Service**" has the meaning set forth in the NS OATT;

"**Notice**" means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 16.1**;

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

"**Off-Peak Non-Firm Rate**" means the rate posted for non-firm Off-Peak Hourly delivery in Schedule 8 of the NS OATT, expressed in $/ MWh, and in effect from time to time, which, at the Effective Date, is set at a maximum of $4.91/MWh;

"**On-Peak Non-Firm Rate**" means the rate posted for non-firm On-Peak Hourly delivery in Schedule 8 of the NS OATT for On-Peak Hourly delivery, expressed in $/ MWh, and in effect from time to time, which, at the Effective Date, is set at a maximum of $10.33/MWh;

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

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

"**Payee**" has the meaning set forth in **Section 4.1**;

"**Payor**" has the meaning set forth in **Section 4.1**;

"**Peak Hourly Proxy Rate**" means (a) an hourly firm peak rate imposed under the NS OATT during the Supplemental Term, or (b) if there is no hourly firm peak rate then in place under the NS OATT, means an hourly transmission service rate to be based on the NS OATT Firm Point-to-Point Firm transmission service for Peak Hours, being the yearly tariff charge for such service divided by the number of Peak Hours per year;

"**Peak Hours**" means the hours of a day that are deemed to be peak hours by, and for the purposes of, the NS OATT;

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

"**Planned Maintenance Period**" means a period of planned total or partial outage which has been submitted to the applicable System Operator for scheduling, that is necessary for the inspection, testing, repair, maintenance or overhaul of, or modifications of a component of the Emera Facilities which in and of itself will result in an interruption or curtailment of the delivery by Emera of the Transmission Facilitation Service;

"**Pricing Node**" has the meaning set forth in **Section 8.5(a)(i)**;

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

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

"**Recipient Party**" has the meaning set forth in **Section 10.2(a)**;

"**Redispatch**" has the meaning set forth in **Section 2.2(e)**;

"**Reference Day-Ahead Price**" means the "Day Ahead Price" (as that term is defined in the ISO-NE Tariff) in respect of the Pricing Node;

"**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 and/or replacements;

"**Reserved Capacity**" has the meaning set forth in the NS OATT;

"**Return on Equity**" has the meaning set forth in the ML-JDA;

"**Safety Event**" means an event which causes Emera to suspend the provision of the Transmission Facilitation Service for the purpose of safeguarding life or property by making Repairs to Emera Facilities or the NS Transmission System in accordance with Good Utility Practice;

"**Sanction**" has the meaning set forth in the ML-JDA;

"**Sanction Agreement**" means the agreement dated December 17, 2012 between Nalcor and Emera;

"**Schedule**", "**Scheduled**" and "**Scheduling**", when used as a verb, means all acts necessary to schedule, or cause to be scheduled, the NS Transmission Rights as is set forth in **Schedule 2**;

"**Scheduling Protocol**" means the scheduling protocol attached as **Schedule 2**;

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

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

"**Subsequent Term**" has the meaning set forth in the Energy and Capacity Agreement;

"**Supplemental Term**" has the meaning set forth in **Section 2.5**;

"**Supporting Material**" has the meaning set forth in **Section 4.1**;

"**System Operator**" means, as applicable, (i) 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 (ii) 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 performing this role, or any successor performing this role, as applicable, in respect of NL;

"**TSR 400**" means the Transmission Service Request 400 made by Emera to the NS System Operator dated July 22, 2011 to contract for a 330 MW Long-Term Firm Point-to-Point Transmission Service reservation under the NS OATT;

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

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

"**Term**" has the meaning set forth in **Section 6.1**;

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

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

"**Third Party Claim**" means a Claim referred to in **Section 11.1** or **11.2**;

"**Transmission Customer**" has the meaning set forth in the NS OATT;

"**Transmission Facilitation Service**" has the meaning set forth in **Section 2.1**;

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

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

"**UARB**" means the Utility and Review Board body established by NS pursuant to the *Utility and Review Board Act* (Nova Scotia), as it may be replaced or reconstituted from time to time;

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

"**Unscheduled Energy**" has the meaning set forth in **Section 8.5(a)**;

"**Upgrade**" has the meaning set forth in **Section 2.3(b)(v)(B)(1)**;

"**Upgrade Charge**" is the additional amount payable by Nalcor in respect of an Upgrade which shall be determined by:

(a) calculating the revenue requirement that would be required by a regulated cost-of-service electric utility to recover the capital cost of the Upgrade, based on an amortization period normally associated with assets of the type comprising the Upgrade, taking into account a reasonable capital structure with a reasonable allocation of debt and equity, all of which shall be based on industry standards for regulated Canadian cost-of-service electric utilities and which shall be based upon the then-applicable methodology for determining regulated cost recovery of transmission upgrades in NS;

(b) Using the outcome of (a), determining the initial 15 years' worth of the revenue requirement, if the applicable amortization period is greater than 15 years. For greater certainty, if the applicable amortization period is equal to or less than 15 years, the applicable amount under this paragraph (b) shall be the total amount calculated in (a); and

(c) determining the monthly amount equal to the total amount determined in (b), divided by the number of months from in-service of the Upgrade to the end of the Supplemental Term;

"**Upgrade Notice**" has the meaning set forth in **Section 2.3(b)(v)(B)(2)**;

"**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;

"**Weekly Proxy Rate**" means the rate calculated by dividing the firm Weekly delivery charge for Reserved Capacity, as provided for in Schedule 7 of the NS OATT, expressed in $/MW, and in effect from time to time, by 168 hours, which will be a charge expressed in $/MWh. As of the Effective Date, the Weekly Proxy Rate is calculated to be $4.92/MWh; and

"**Yearly Proxy Rate**" means the rate calculated by dividing the firm Yearly delivery charge for Reserved Capacity, as provided for in Schedule 7 of the NS OATT, expressed in $/MW, and in effect from time to time, by 8760 hours, which will be a charge expressed in $/MWh. As of the Effective Date, the Yearly Proxy Rate is calculated to be $4.91/MWh.

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 herein) and in force from time to time, and to any statute or regulation that may be passed that has the effect of supplementing or replacing the statute so referred to or the regulations made pursuant thereto, and any reference to an order, ruling or decision shall be deemed to be a reference to such order, ruling or decision as the same may be varied, amended, modified, supplemented or replaced from time to time.

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

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

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

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

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

(m) Subsequent Agreements - Wherever a provision of this Agreement states that:

(i) **Section 1.2(m)(i)** applies, in respect of the matters referred to in that provision:

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

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

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

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

(ii) **Section 1.2(m)(ii)** applies, in respect of the matters referred to in that provision:

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

(B) the failure, inability or refusal of either Party or both Parties to reach agreement for any reason whatsoever will not constitute a Dispute and such matters are not subject to resolution pursuant to the Dispute Resolution Procedure.

1.3 Conflicts between Parts of Agreement

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

1.4 Applicable Law and Submission to Jurisdiction

(a) 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 10**, 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.

(b) Notwithstanding **Section 1.4(a)**, the NS OATT shall be construed in accordance with the laws of NS and any applicable Federal laws of Canada, the NB OATT shall be construed in accordance with the laws of NB and any applicable Federal laws of Canada and the ISO-NE Tariff shall be construed in accordance with the governing laws of such tariff.

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 - Formal Agreements

Schedule 2 - Scheduling Protocol

Schedule 3 - Calculation of Transmission Losses

Schedule 4 - Dispute Resolution Procedure

Schedule 5 - Form of Assignment Agreement

1.6 Inter-Relationship with Original NSTUA

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

ARTICLE 2
PROVISION OF TRANSMISSION FACILITATION SERVICE

2.1 Provision of Transmission Facilitation Service

Subject to the terms set out in this Agreement, in each hour (or any part thereof if such sub-hour scheduling is permitted by the NS OATT) of each full or partial year of the Initial Term and any Subsequent Term or Supplemental Term, Emera shall Schedule and transmit, or shall cause to be Scheduled and transmitted, from the Delivery Point to the NS-NB Border, Energy and Capacity in the amount of the NS Nominated Transmission Quantity and as delivered by Nalcor at the Delivery Point (the "**Transmission Facilitation Service**"). The provision of the Transmission Facilitation Service by Emera to Nalcor shall be subject to the following terms and specifications:

(a) Subject to the Upgrade provided for in **Section 2.3(b)(v)**, the maximum amount of Energy that may be Scheduled by Nalcor in accordance with this Agreement shall be the lesser of:

(i) the Maritime Link Design Capacity less the transmission Capacity on the Maritime Link required in any given hour (or sub-hourly scheduling interval, if applicable) by Nalcor to deliver the Nova Scotia Block and any other Energy or Capacity or both which Nalcor has agreed to sell and deliver to Emera over the ML; and

(ii) the specified transmission Capacity levels set forth in, and as adjusted pursuant to, **Section 2.1(b)** in respect of the given calendar months,

(in either case, the "**Nalcor Maximum Transmission Capacity Level**"). Any NS Transmission Rights in excess of the Nalcor Maximum Transmission Capacity Level shall be subject to further agreement of the Parties;

(b) as at the Effective Date, Nalcor expects that the schedule of its transmission Capacity requirements for the Nalcor Maximum Transmission Capacity Level will be as provided in the following table:

Month	Transmission Capacity (MW)	Month	Transmission Capacity (MW)
January	150	July	330
February	150	August	330
March	330	September	330
April	330	October	330
May	330	November	330
June	330	December	150

The transmission Capacity levels indicated above shall apply over the 24 hour period for each day of the given month. Prior to the end of the Initial Term or any Subsequent Term, and from time to time during the Initial Term and any Subsequent Term, Nalcor shall give Emera adequate Notice (which may be as long as seven years depending on the circumstances) of its good faith estimate of any increase in the amount of transmission Capacity required by Nalcor above the amounts described in the above table in sufficient time to allow Emera to plan, build and commission necessary upgrades and additions required to the NS Transmission System before the end of the Initial Term or any Subsequent Term to allow it to provide the Transmission Facilitation Service for such additional transmission Capacity in accordance with the terms of this Agreement. The Notice given by Nalcor may provide for higher transmission Capacity requirements in respect of the hours not associated with the delivery of the Nova Scotia Block and lower transmission Capacity requirements for those hours that are associated with the delivery of the Nova Scotia Block. Upon its receipt of such Notice from Nalcor, Emera shall plan, build and commission the necessary upgrades and additions within a reasonable period, having regard for the scope of work involved;

(c) Emera shall, subject to the NS OATT and the terms of this Agreement, provide the Transmission Facilitation Service solely to enable Nalcor to deliver the NS Nominated Transmission Quantity in one direction from the Delivery Point to the NS-NB Border;

(d) Emera shall use the Emera Firm Point-to-Point Transmission Service in order to facilitate the provision of the Transmission Facilitation Service to Nalcor. Curtailments to the Emera Firm Point-to-Point Transmission Service will be made by the NS System Operator on the basis of the NS OATT, and such Curtailments may consequently result in Curtailment of the transmission of Nalcor's Energy under the Transmission Facilitation Service. Emera shall cause the effect of such Curtailment on the transmission of the NS Nominated Transmission Quantity being transmitted during the period of such Curtailment to be as follows:

(i) any Interruptible Customers will be interrupted prior to any Curtailment of the NS Nominated Transmission Quantity;

(ii) amounts of the Confirmed NS-NTQ Energy above the MW amount governed by **Section 2.1(d)(iii)** will be Curtailed next, as if it was transmitted pursuant to a Non-Firm Point-To-Point Transmission Service reservation under the NS OATT with a duration equal to that of any forward schedule associated with such Confirmed NS-NTQ Energy, such that as between the portion of the Confirmed NS-NTQ Energy governed by this **Section 2.1(d)(ii)** and any transmission transaction conducted pursuant to Non-Firm Point-to-Point Transmission Service, to the extent practicable and consistent with Good Utility Practice, Curtailments will be made to transactions of the shortest term and applied on a pro rata basis to transactions with an equal term. If no applicable forward schedule has been submitted by Nalcor pursuant to **Section 2.3(b)(i)** or **2.3(b)(iii)**, Curtailment shall be applied as if such portion of the Confirmed NS-NTQ Energy is being transmitted pursuant to daily Non-Firm Point-to-Point Transmission Service; and

(iii) up to 80 MW of the NS Nominated Transmission Quantity will be Curtailed next, pro rata with, and as if it was transmitted pursuant to a Firm Point-To-Point Transmission Service reservation under the NS OATT,

provided that such Curtailments or interruptions described in **(i)** to **(iii)** contribute to relieving the transmission constraint which caused the need for the original Curtailment by the NS System Operator;

(e) the Confirmed NS-NTQ Energy delivered to the NS-NB Border shall be net of Transmission Losses;

(f) Scheduling of Energy and Capacity pursuant to this Agreement shall be performed in accordance with the Scheduling Protocol;

(g) Nalcor shall have no right to redirect service to alternate points of delivery or receipt on any portion of the NS Transmission System. Notwithstanding the foregoing, if a new transmission intertie is developed between the NS Transmission System and the NB Transmission System, or between the NS Transmission System and a New England transmission system, then the Parties shall enter into negotiations to determine the terms on which Nalcor shall have the right to redirect the point of delivery associated with the Transmission Facilitation Service to the point of interconnection between the NS Transmission System and such new intertie. **Section 1.2(m)(ii)** applies to this **Section 2.1(g)**;

(h) if the capability of the NS Transmission System to transmit Energy and Capacity pursuant to Firm Point-to-Point Transmission Service from the Delivery Point to the NS-NB Border increases after the Effective Date, the portion of the NS Nominated Transmission Quantity which may be Curtailed pursuant to **Section 2.1(d)(iii)** shall be

increased by the MW amount of such increase in transmission Capacity, provided however that with respect to any Capacity increases resulting from:

(i) upgrades necessary to allow Emera to serve Native Load Customers; and

(ii) upgrades to the NS Transmission System made because a Transmission Customer has applied for and committed to Firm Point-to-Point Transmission Service under the NS OATT,

the increase in the portion of the NS Nominated Transmission Quantity to be treated pursuant to **Section 2.1(d)(iii)** shall be limited to any incremental increase in transmission Capacity not used or required to service Native Load Customers or to provide the Firm Point-to-Point Transmission Service, as the case may be. The incremental portion of the NS Nominated Transmission Quantity to be treated pursuant to **Section 2.1(d)(iii)** shall not thereafter be subject to reduction as a result of the subsequent provision of additional Firm Point-To-Point Transmission Service to another Transmission Customer, but may be reduced upon 12 months' Notice by Emera to Nalcor if such reduction is required for the purpose of meeting increased service requirements by Native Load Customers, and such increase in Native Load Customer requirements has been identified by the NS System Operator or NSPI in the course of its normal system planning processes; and

(i) **Section 2.1(h)** shall not:

(i) operate to allow an increase in the NS Nominated Transmission Quantity beyond the quantity referred to in **Section 2.1(a)**; and

(ii) relieve Nalcor of its obligation to give Notice under **Section 2.1(b)**.

2.2 **Emera Responsibilities and Covenants**

Emera covenants to Nalcor that:

(a) it has made the TSR 400 application;

(b) it shall contract with the NS System Operator for the Emera Firm Point-to-Point Transmission Service;

(c) once obtained, it shall maintain the Emera Firm Point-to-Point Transmission Service in good standing throughout the Term;

(d) during the Term, and absent the occurrence of Forgivable Events, the transmission Capacity of the Emera Facilities and the Emera Firm Point-to-Point Transmission Service shall be sufficient to allow transmission of the Nalcor Maximum Transmission Capacity Level;

(e) to the extent required in order to provide the Transmission Facilitation Service, and subject to **Section 2.2(f)**, Emera shall modify, or shall cause to be modified, the

dispatch patterns of Emera Facilities in order to alleviate such transmission constraints on the NS Transmission System as would otherwise prevent the NS Nominated Transmission Quantity from being Scheduled and delivered over the NS Transmission System ("**Redispatch**");

(f) Emera shall not be obligated to Redispatch to alleviate any constraints caused by Forgivable Events. Emera shall not be relieved of its obligation to Redispatch on the basis that the expenditure associated with the additional cost of such Redispatch would not be in accordance with Good Utility Practice;

(g) to the extent Emera considers it commercially reasonable (considering only the financial implications to Emera and not Nalcor) to Redispatch in order to provide the Transmission Facilitation Service during Planned Maintenance Periods, Emera shall Redispatch to facilitate the transmission of the NS Nominated Transmission Quantity during Planned Maintenance Periods; and

(h) Emera shall maintain the NS Transmission System and the Emera Facilities in accordance with Good Utility Practice so as to be capable of providing the Transmission Facilitation Service.

2.3 Payment for the Transmission Facilitation Service

(a) Payment for Transmission of Confirmed NS-NTQ Energy during the Initial Term and any Subsequent Term - Nalcor will only pay the Applicable Tariff Charges in respect of the Transmission Facilitation Service, notwithstanding any schedule provided to Emera by Nalcor during the Initial Term or any Subsequent Term pursuant to **Sections 2.1(b)** or **2.3(b)(i)** or the Scheduling Protocol;

(b) Scheduling and Calculation of Transmission Charges

(i) Forward Schedule - During the Initial Term and any Subsequent Term, Nalcor may, at its option, submit to Emera weekly, monthly or yearly good faith estimates of the NS-NTQ, in accordance with the following provisions (a "**Forward Schedule**"):

(A) weekly Forward Schedules shall cover a seven day period, commencing on Sunday and ending on Saturday, and shall provide an estimate of the NS-NTQ to be transmitted in each hour during such week. Weekly Forward Schedules shall be submitted by Nalcor prior to 0700 APT on the Saturday before the applicable weekly period;

(B) monthly Forward Schedules shall cover a calendar month period and shall provide an estimate of the NS-NTQ to be transmitted in each day during such month. Monthly Forward Schedules shall be submitted by Nalcor prior to 0700 APT on the day before the start of the applicable calendar month;

(C) yearly Forward Schedules shall cover a calendar year period and shall provide an estimate of the NS-NTQ to be transmitted in each week during such year. Yearly Forward Schedules shall be submitted by Nalcor prior to 0700 APT on the day before the start of the applicable calendar year; and

(D) if Nalcor submits a monthly or yearly Forward Schedule in accordance with **Section 2.3(b)(i)(B)** or **2.3(b)(i)(C)**, then it shall, prior to 0700 APT on each Saturday preceding a full or partial week covered by such monthly or yearly Forward Schedule, also submit an estimate of the NS-NTQ to be transmitted in each hour during each such full or partial week of the Forward Schedule.

(ii) Variation of Forward Schedule during the Initial Term and any Subsequent Term - Notwithstanding the estimates provided in any Forward Schedule, during the Initial Term and any Subsequent Term, nothing herein shall limit Nalcor's right to Schedule its transmission of actual NS-NTQ quantities in accordance with the Scheduling Protocol, as provided for in **Section 2.1(f)**.

(iii) Forward Supplemental Term Schedule - No later than 60 days prior to the Anniversary Date in each year of the Supplemental Term, Nalcor shall submit a Forward Supplemental Term Schedule for the 24 months commencing on such Anniversary Date, which shall nominate the NS-NTQ that Emera shall transmit for Nalcor in each applicable month in accordance with this Agreement, and Nalcor may schedule transmission of such nominated NS-NTQ amounts pursuant to the Scheduling Protocol in each month covered by the Forward Supplemental Term Schedule.

(iv) Maximum Capacity Level During Supplemental Term - Subject to **Section 2.3(b)(v)**, the NS-NTQ in the Forward Supplemental Term Schedule for any scheduling interval shall not exceed the then-applicable Nalcor Maximum Transmission Capacity Level, as provided for by **Section 2.5**.

(v) Variation to Forward Supplemental Term Schedule

(A) Not later than 20 days prior to any month of the Supplemental Term, Nalcor may also provide Emera with its good faith estimate of its transmission Capacity requirements, if any, in respect of such month that are in addition to those specified in the Forward Supplemental Term Schedule.

(B) Not later than five Business Days prior to the first day of the month for which the additional transmission Capacity is requested, Emera, acting reasonably, shall provide Nalcor with:

(1) confirmation that the additional transmission Capacity specified in Nalcor's good faith estimate, or a lesser amount

of additional Capacity (the "**Additional Allowed Transmission Capacity**") is, in Emera's good faith opinion, available to be transmitted pursuant to this Agreement during such month without triggering the need for the construction of an upgrade to the NS Transmission System (an "**Upgrade**"), taking into account the requirement of Emera to Redispatch as is provided for under **Section 2.2(e)** and if so, Nalcor may schedule such Additional Allowed Transmission Capacity during the applicable month in accordance with the Scheduling Protocol. Emera shall not claim that the Nalcor request triggers an Upgrade if, in respect of any hour, the MW amount of the additional transmission Capacity specified in Nalcor's good faith estimate plus the MW amount of transmission Capacity associated with the Forward Supplemental Term Schedule is less than or equal to the then-applicable Nalcor Maximum Transmission Capacity Level; and/or

(2) confirmation that, in Emera's good faith opinion, the provision of all or some portion of the additional transmission Capacity specified in Nalcor's good faith estimate would trigger the need for the construction of an Upgrade. Any confirmation provided by Emera pursuant to this **Section 2.3(b)(v)(B)(2)** shall specify the maximum amount of transmission Capacity that can be provided without triggering the need for an Upgrade. If a confirmation is given by Emera pursuant to this **Section 2.3(b)(v)(B)(2)**, the additional transmission Capacity that shall be available to Nalcor in such month shall be limited to the Additional Allowed Transmission Capacity quantity provided for pursuant to **Section 2.3(b)(v)(B)(1)**, and Nalcor may provide Emera with adequate Notice to plan and build any necessary Upgrade, which Notice period may be as long as seven years if required by Emera in the circumstances, given the extent of the Upgrade required (the "**Upgrade Notice**"). Upon receipt of the Upgrade Notice from Nalcor, Emera shall plan and build, or shall cause to be planned and built, such Upgrades as are required to provide Nalcor with the transmission Capacity level specified in the Upgrade Notice, and upon the in-service of the resulting Upgrade, the then-applicable Nalcor Maximum Transmission Capacity Level shall be increased by the MW amount of the additional transmission Capacity resulting from the Upgrade.

(C) Notwithstanding any other provision of this Agreement, the Parties agree that for the purposes of **Section 2.3(b)(v)(B)(1)**, if the total

requested transmission Capacity MW amount as specified in Nalcor's good faith estimate is greater than the then-applicable Nalcor Maximum Transmission Capacity Level, and Emera agrees to allow Nalcor to schedule such Energy, then Emera shall not be liable to Nalcor for any failure to transmit any portion of the agreed Additional Allowed Transmission Capacity that is in excess of the Energy amount that can be transmitted utilizing the then-applicable Nalcor Maximum Transmission Capacity Level.

(vi) Other Amounts Transmitted at Emera's Option - During the Supplemental Term Nalcor may, from time to time, request transmission service in accordance with **Section 2.3(b)(xiii)** for amounts of NS-NTQ in excess of the amounts scheduled or requested under **Sections 2.3(b)(iii)** or **2.3(b)(v),** and Emera may, at its sole option, make such amounts available to Nalcor in accordance with **Section 2.3(b)(xiii)**.

(vii) Applicable Tariff Charges during the Initial Term and any Subsequent Term - Nalcor will pay the Applicable Tariff Charges for the Confirmed NS-NTQ Energy, which during the Initial Term and any Subsequent Term will be:

(A) the Weekly Proxy Rate, for all hours in any week in respect of which Nalcor has submitted a weekly Forward Schedule, provided that at least one MWh of NS-NTQ is specified in the schedule provided by Nalcor to Emera pursuant to Step 1 of Section 3.1 of the Scheduling Protocol on every day of the week covered by the weekly Forward Schedule;

(B) the Monthly Proxy Rate, for all hours in any month in respect of which Nalcor has submitted a monthly Forward Schedule, provided that at least one MWh of NS-NTQ is specified in the schedule provided by Nalcor to Emera pursuant to Step 1 of Section 3.1 of the Scheduling Protocol on every day of the month covered by the monthly Forward Schedule;

(C) the Yearly Proxy Rate, for all hours in any year in respect of which Nalcor has submitted a yearly Forward Schedule, provided that at least one MWh of NS-NTQ is specified in the schedule provided by Nalcor to Emera pursuant to Step 1 of Section 3.1 of the Scheduling Protocol on every day of the year covered by the yearly Forward Schedule; or

(D) subject to **Section 2.3(b)(xiii)(C)**, the Daily Proxy Rate, for all hours in respect of which none of **Sections 2.3(b)(vii)(A)** through **2.3(b)(vii)(C)** apply.

(viii) Applicable Supplemental Term Tariff Charges during the Supplemental Term - Nalcor will pay Applicable Supplemental Term Tariff Charges during each month of the Supplemental Term in accordance with the following:

(A) provided that the Forward Supplemental Term Schedule then in effect provides for the nomination of amounts of total NS-NTQ (in MWh) in each month comprising such schedule that are equal to or greater than the NS-NTQ amounts associated with the corresponding months in the Last Year's Schedule, Nalcor shall pay the greater of,

(1) the Yearly Proxy Rate times the number of total MWh nominated in respect of the applicable month by Nalcor in the Forward Supplemental Term Schedule; or

(2) the Yearly Proxy Rate times the total actual MWh amount of Energy transmitted by Emera on behalf of Nalcor during the applicable month pursuant to **Sections 2.3(b)(iii)**, **2.3(b)(v)** and **2.3(b)(xiii)**; or

(B) if the Forward Supplemental Term Schedule then in effect provides for the nomination of amounts of total NS-NTQ (in MWh) in any month comprising such schedule that are less than the NS-NTQ amounts associated with the corresponding month in the Last Year's Schedule, Nalcor shall pay the greater of:

(1) the Peak Hourly Proxy Rate times the number of total MWh nominated in respect of the applicable month by Nalcor in the Forward Supplemental Term Schedule; or

(2) the Peak Hourly Proxy Rate times the total actual MWh amount of Energy transmitted by Emera on behalf of Nalcor during the applicable month pursuant to **Sections 2.3(b)(iii)**, **2.3(b)(v)** and **2.3(b)(xiii)**.

(C) for greater certainty, and subject only to **Section 2.3(b)(viii)(D)**, Nalcor shall be required to pay the Applicable Supplemental Term Tariff Charges for the NS-NTQ nominated in the Forward Supplemental Term Schedule pursuant to either Section **2.3(b)(viii)(A)** or **2.3(b)(viii)(B)**, as applicable, whether or not Nalcor actually transmits any NS-NTQ during the period covered by the Forward Supplemental Term Schedule.

(D) Nalcor shall not be required to pay Applicable Supplemental Term Tariff Charges in respect of nominated NS-NTQ amounts that Emera fails to transmit on Nalcor's behalf due to a Forgivable Event claimed by Emera, provided that Nalcor shall only be relieved of its payment obligations in respect of NS-NTQ amounts that the Parties are unable

to reschedule for transmission, using their good faith efforts, during the remainder of the calendar month in which the Forgivable Event occurs.

(ix) Upgrade Charge - The Upgrade Charge, if any, shall be paid by Nalcor to Emera in equal monthly instalments over the remainder of the Supplemental Term, commencing upon the in-service date of the Upgrades, whether or not Nalcor actually schedules any Energy subsequent to the in-service date of the Upgrades. If the Applicable Supplemental Term Tariff Charges payable by Nalcor pursuant to **Section 2.3(b)(viii)** increase as a result of the addition to the NS Transmission System of an Upgrade constructed pursuant to this Agreement, then the total Upgrade Charge payable by Nalcor in respect of such Upgrade shall be reduced by an amount that is equal to the incremental Applicable Supplemental Term Tariff Charges resulting from such Upgrade.

(x) Upgrade Charge Specified Dispute - Any Dispute over the calculation of the Upgrade Charge shall be a Specified Dispute.

(xi) Payment for Ancillary Services - Nalcor shall reimburse Emera for the actual amounts paid by Emera to the NS System Operator in respect of charges for the Ancillary Services necessary to support the NS-NTQ quantities transmitted pursuant to this Agreement provided that Nalcor shall not be obliged to reimburse Emera for Ancillary Service charges attributable to Redispatch.

(xii) Emera inability to Transmit the NS-NTQ - If on any day during the Initial Term and any Subsequent Term:

(A) Emera fails to transmit the NS-NTQ as specified in the schedule provided by Nalcor to Emera pursuant to Step 1 of Section 3.1 of the Scheduling Protocol because of a Planned Maintenance Period, a Force Majeure or Safety Event in respect of such day or for any other reason, and as a consequence,

(B) there is no Confirmed NS-NTQ Energy for that day,

then, for the purposes of this **Section 2.3(b)**, the Confirmed NS-NTQ Energy for that day shall be deemed to be one MWh and Nalcor shall pay the Applicable Tariff Charges that would have been applicable had Emera transmitted one MWh of NS-NTQ on that day.

(xiii) Intra-day Scheduling Changes - Notwithstanding the timelines associated with the Scheduling of NS-NTQ provided for in the Scheduling Protocol, and subject to **Section 2.3(b)(v)** and **2.3(b)(vi)**, Nalcor may request an increase to the amount of NS-NTQ to be transmitted by Emera on a given day after the times specified for the Scheduling of NS-NTQ on such day as provided for in the Scheduling Protocol, provided that:

(A) Emera shall accommodate such request only if it has transmission capacity available at the time of the request;

(B) Emera shall have no obligation to Redispatch to accommodate the request; and

(C) in respect of each incremental MWh of NS-NTQ transmitted pursuant to this **Section 2.3(b)(xiii)**, Nalcor shall pay the On-Peak Non-Firm Rate, the Off-Peak Non-Firm Rate, the Peak Hourly Proxy Rate or the Yearly Proxy Rate, as applicable, during the Initial Term and any Subsequent Term, and shall pay the Yearly Proxy Rate or the Peak Hourly Proxy Rate, as applicable, during the Supplemental Term.

(c) Subject to Nalcor's obligation to pay Applicable Tariff Charges, Applicable Supplemental Term Tariff Charges, Ancillary Service charges and any Upgrade Charges to Emera in accordance with **Section 2.3(b)**, Emera shall pay all costs associated with the Emera Facilities, any required additions or upgrades to the NS Transmission System and the Emera Facilities and costs associated with Redispatch and the Transmission Facilitation Service. Nothing in this paragraph shall require Emera to upgrade any of the Emera Facilities to facilitate the Redispatch provided for in **Section 2.2(g)**.

(d) Emera agrees: (i) that no part of the Actual Capital Costs, AFUDC, Financing Costs, Return on Equity or any other costs or expenses related to the Maritime Link shall be allocated to the NS Transmission System or shall be embedded in the Tariff Charges, and (ii) to indemnify, defend, reimburse, release and save harmless Nalcor and the Affiliates of Nalcor from and against, and as a separate and independent covenant agrees to be liable for, all Claims based upon, in connection with, relating to or arising out of a breach by Emera of this **Section 2.3(d)**.

2.4 Extension During Subsequent Term

If the Parties have agreed to enter into a Subsequent Term pursuant to the ECA, then this Agreement shall be deemed extended during the Subsequent Term, and during the Subsequent Term, Emera shall continue to provide to Nalcor the Transmission Facilitation Service and Nalcor shall pay for same in accordance with the terms and conditions of this Agreement.

2.5 Nalcor Transmission Rights If No Subsequent Term

If the Parties have not agreed to enter into a Subsequent Term following the Initial Term pursuant to the ECA, then Nalcor may, at its option upon Notice given as soon as is possible, acting reasonably, after the Parties agree that there will be no Subsequent Term, renew this agreement for 15 years on the terms contained in this Agreement (the "**Supplemental Term**"). The Nalcor Maximum Transmission Capacity Level that was in effect at the end of the Initial Term shall apply during the Supplemental Term, subject to any increase resulting from an Upgrade, as provided for in **Section 2.3(b)(v)(B)(2)**.

2.6 Parties To Comply with the NS OATT

(a) Nalcor agrees that:

(i) except in respect of transmission service directly obtained by Nalcor under the NS OATT pursuant to **Section 3.3**, neither the execution nor the implementation of this Agreement will result in the classification or qualification of Nalcor as a "Transmission Customer" under the NS OATT; and

(ii) it will not take steps or actions in its use of the Transmission Facilitation Service that would prevent Emera from complying with the terms of the NS OATT, unless otherwise provided for in this Agreement.

(b) Emera shall comply with the NS OATT in providing the Transmission Facilitation Service.

(c) The Parties agree that if there is any conflict between the provisions of this Agreement and the provisions of the NS OATT, then for the purposes of the interpretation and implementation of this Agreement, the provisions of this Agreement shall prevail.

2.7 Effect of Inability to Perform

Notwithstanding anything to the contrary in this Agreement, Emera will not be in breach of, and shall not be liable to Nalcor, for any Losses under this Agreement and no Emera Default shall occur, as a result of any interruption to, or non-provision of, the Transmission Facilitation Service that is caused by a Forgivable Event affecting the Emera Facilities.

2.8 Measurement

The measurement of the Confirmed NS-NTQ Energy will be made in accordance with the NS OATT, the Interconnection Operators Agreement and the practices of the NS System Operator, as applicable. Except with respect to any costs that may be incorporated into the Tariff Charges for which Nalcor is responsible pursuant to **Section 2.3**, any costs imposed by the NS System Operator associated with the transmission services provided hereunder in relation to metering and communications equipment shall be to the account of Emera.

2.9 Provision of Information

Emera shall provide to the NL System Operator:

(a) by December 30 of each year for the following year, an annual plan indicating the scheduling of any Planned Maintenance Periods and any known repairs relating to Safety Events affecting the Emera Facilities; and

(b) as soon as can be reasonably known, schedules of any unforeseen Planned Maintenance Periods or Safety Events, which could affect the Transmission Facilitation Service.

Any information provided to the NL System Operator under this Section shall not be disclosed, directly or indirectly, to Marketing Personnel.

2.10 Back-Up Capacity Service

(a) Nalcor may request that Emera provide back-up Capacity to support that portion of the NS-NTQ that is treated as if it is being transmitted under the NS OATT using Non-Firm Point-to-Point Transmission pursuant to **Section 2.10(b)** ("**Back-up Capacity**").

(b) Emera shall then apply to the UARB for its approval to establish a Back-up Capacity rate structure and tariff ("**Back-up Capacity Tariff**"). The Back-up Capacity Tariff requested shall be based on the following principles:

(i) The tariff application will include provisions for:

(A) recovery of fixed operating costs if provided from facilities in NS owned by Emera or an Affiliate of Emera existing at the time of the UARB application, or fixed operating and capital costs for new facilities or upgrades to existing facilities, for the Back-up Capacity on a $/MW/day basis for periods when Nalcor requests the Back-up Capacity, whether or not it actually calls upon delivery of the Back-up Capacity; and

(B) the actual variable costs to produce the Back-up Capacity plus the variable capital contribution and reasonable margin applicable on a $/MWh basis during periods when Nalcor actually calls upon the delivery of the Back-up Capacity; and

(ii) the Back-up Capacity shall be limited to 170 MW and shall be available for the period from April 1 to October 31 of each year.

(c) Nalcor shall not be obligated to contract for any Back-Up Capacity.

ARTICLE 3
GENERAL PROVISIONS

3.1 Safety

Emera shall have the right to suspend the delivery of the Transmission Facilitation Service without breaching this Agreement or incurring liability to Nalcor during a Safety Event, but all such suspensions shall be of a minimum duration as required given the circumstances, and when possible and when consistent with Good Utility Practice, be arranged for a time least objectionable to the Parties, acting reasonably.

3.2 Planned Maintenance Period

All Planned Maintenance Periods shall be of a minimum duration as required given the circumstances, and when possible, and when consistent with Good Utility Practice, be arranged

by the Party requiring the Planned Maintenance Period for a time least objectionable to the Parties, acting reasonably.

3.3 Nalcor's Rights to Procure Transmission Service

Nothing in this Agreement shall in any way limit Nalcor from making an application to the NS System Operator for transmission service under the NS OATT for transmission service from the Delivery Point to the NS-NB Border.

3.4 Title, Capacity Sales and Responsibility for Transmission and Related Claims

Title to the Energy or Capacity or both transmitted or caused to be transmitted over the NS Transmission System pursuant to the Transmission Facilitation Service will remain with Nalcor. As between Emera and Nalcor, Nalcor shall be responsible for, and shall indemnify, defend and hold harmless Emera against, any third party Losses (including transmission and related costs and reasonable legal costs and expenses) or injury to any third party or property, caused by the transmission of the Confirmed NS-NTQ Energy, except to the extent that any Losses are attributable to the negligence, wilful misconduct or breach of Applicable Law by Emera or the NS System Operator. Emera makes no representation or warranty of any kind that the Transmission Facilitation Service can be used by Nalcor to support Capacity sales, nor shall Emera be liable to Nalcor in respect of any such sales to third parties. Nalcor agrees to indemnify, defend, reimburse, release and save harmless Emera and the Affiliates of Emera from and against, and as a separate and independent covenant agrees to be liable for, all Claims based upon, in connection with, relating to or arising out of Capacity sales to a third party by Nalcor where the Capacity obligation was intended to be met with Energy delivered with the use of the Transmission Facilitation Service.

3.5 Change in NS OATT Defined Terms

If at any time the NS OATT or any defined term under the NS OATT used in this Agreement is revoked or eliminated, and such revocation or elimination is (i) not a Government Action; and (ii) materially affects the interpretation of, or the ability to give effect to, any provision of this Agreement, the Parties shall negotiate new valid and enforceable provisions to allow the interpretation of, and give effect to, this Agreement. **Section 1.2(m)(i)** applies to this **Section 3.5.**

3.6 Requirements of Good Utility Practice

Notwithstanding any other provision of this Agreement, the Parties agree that their respective bulk energy systems used by them to perform any of their obligations under this Agreement meet the requirements of Good Utility Practice as at the A&R Effective Date.

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

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 in the Project NDA. 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)** and provisions of this Agreement dealing with Government Action:

(i) Emera shall pay or cause to be paid all Taxes on or with respect to the NS Transmission System;

(ii) notwithstanding **Section 5.1(b)(i)**, Nalcor shall pay or caused to be paid all Taxes imposed by any Authorized Authority on or with respect to Confirmed NS-NTQ Energy transmitted by Emera pursuant to this Agreement;

(iii) 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;

(iv) 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

(v) 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)** and provisions of this Agreement dealing with Government Action, any New Taxes shall be paid by the Party on whom such New Taxes are imposed by Applicable Laws.

(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 868143132, 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 this **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 other Party pursuant to this Section shall be reduced by the amount of such Taxes, if any, which the other Party is able to recover by way of a Tax credit or other refund or recovery of such Taxes; and

(b) for greater certainty, this Section shall only apply to any application or withholding of Taxes imposed by the Foreign Jurisdiction on amounts payable (or consideration provided) by the other Party to the First Party under this Agreement, and shall not apply to any Taxes imposed by the Foreign Jurisdiction on the other Party (or any Affiliate thereof) that may be included in calculating any amounts payable under any other Section of this Agreement.

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

This Agreement became effective on the Effective Date and shall terminate, in accordance with **Section 6.2** (the "**Term**").

6.2 Termination of Agreement

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

(a) [Intentionally deleted];

(b) the expiration, as applicable, of: (i) the Initial Term and any Subsequent Term, (ii) the Initial Term and the Supplemental Term, or (iii) if there is no Subsequent Term and no Supplemental Term, the Initial Term;

(c) written agreement of the Parties to terminate;

(d) termination by Emera or Nalcor under **Section 6.3**; and

(e) termination by Nalcor under **Section 8.3** or **8.4**.

6.3 Extended Force Majeure

(a) Termination of Agreement - If:

(i) Emera has given Notice under **Section 9.1(b)(i)** of Force Majeure which prevents Emera from providing all of the Transmission Facilitation Service;

(ii) despite Emera complying with its obligations under **Section 9.1(b)(iii)**, there are no commercially reasonable means to rectify the consequences of such Force Majeure within 36 months after the Force Majeure commenced (the "**Extended Force Majeure Period**"); and

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

then, unless the Extended Force Majeure Period is extended pursuant to **Section 6.3(b)**, either Party may elect on 60 days' Notice to the other Party to terminate this

Agreement without liability to the other, except for the liabilities and obligations provided for in **Section 6.4**.

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

6.4 Effect of Termination

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

(i) each Party shall promptly return to the other Party all Confidential Information of the other Party in the possession of such Party, and destroy any internal documents to the extent that they contain any Confidential Information of the other Party (except such internal documents as are reasonably required for the maintenance of proper corporate records and to comply with Applicable Law and for the purposes of the resolution of any Dispute, which shall continue to be held in accordance with the provisions of **Article 13**); 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 6.4**.

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

(i) the final settlement of all accounts between the Parties(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 13.1**);

(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 16.13**.

ARTICLE 7
PERMITS, LICENSES AND APPLICABLE LAW

7.1 **Licences and Compliance with Law**

(a) The Parties shall each be responsible for obtaining and maintaining any licences and permits as may be required for their 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 8
DEFAULT AND REMEDIES

8.1 **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 fails to provide the Transmission Facilitation Service in accordance with the provisions of this Agreement;

(c) Emera is in default or in breach of any term, condition or obligation under this Agreement, other than those described in **Section 8.1(a)** or **Section 8.1(b)** 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;

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

(e) 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;

(f) any Insolvency Event occurs with respect to Emera; and

(g) a Government Action occurs.

8.2 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 12**, 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. For greater certainty, Nalcor's right to damages for a Government Action under this **Section 8.2(b)** are in addition to any rights it may have under **Section 8.4**.

(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 the resolution of future Disputes of a similar nature.

8.3 Early Termination Right

If Emera is in default of its obligation to provide the Transmission Facilitation Service in accordance with this Agreement, other than as a result of the occurrence of a Government Action which is governed by **Section 8.4**, and such default is not cured within 24 months after the default of the obligation to provide the Transmission Facilitation Service commenced, Nalcor, provided it is in material compliance with the provisions of this Agreement and the ECA, may, at its option, provide Notice to Emera that it intends to terminate this Agreement. On providing such Notice to Emera, Nalcor shall be entitled to exercise all rights, remedies and recourse as set forth in **Section 8.2** to recover all Losses arising from the failure of Emera to provide the Transmission Facilitation Service for the Term in accordance with the provisions of this Agreement. On payment to Nalcor of such Losses, this Agreement shall terminate without further liability of either Party to the other.

8.4 Government Action

(a) Termination Right - If a Government Action occurs, and such Government Action causes Nalcor to be deprived of all or substantially all of the delivery or enjoyment of, or access to, the NS Transmission Rights, Nalcor may, on 30 days' Notice, terminate this Agreement, and Emera shall, subject to **Section 8.4(d)**, pay to Nalcor the amount of all Losses of Nalcor or an Affiliate of Nalcor, as the case may be, arising or incurred due to the Government Action.

(b) Sole Right, Remedy and Recourse - If Nalcor elects to terminate this Agreement pursuant to **Section 8.4(a)**, the sole and exclusive right, remedy and recourse of Nalcor for the Government Action shall be pursuant to this **Section 8.4**, and payment to Nalcor by Emera and/or NS of the amount of the Losses as set forth in this **Section 8.4** will constitute full and final satisfaction of all amounts that may be claimed by Nalcor for and in respect of this Agreement, including the Government Action. Upon such payment to Nalcor, Emera will be released and forever discharged from any and all liability in respect of this Agreement, including the Government Action.

(c) Dispute Resolution for Government Action - If Emera contests whether a Government Action has occurred, the impact on Nalcor of such Government Action or the amount of the Losses being claimed by Nalcor the remedies of Nalcor with respect to such Government Action shall be suspended until the matter has been determined in accordance with the Dispute Resolution Procedure. The Parties agree that NL and NS shall be given notice of and have the right to be parties to any arbitration or litigation of such Dispute pursuant to the Dispute Resolution Procedure.

(d) Adjustment for Compensation Paid by NS - The Losses payable to Nalcor as a result of the occurrence of a Government Action shall be net of any compensation paid to Nalcor by NS as part of the Government Action or as a result of the Government Action. There is no obligation on Nalcor to exercise any rights it may have against NS under the Inter-Provincial Agreement, or otherwise, prior to exercising its rights under this Agreement, or at all, in order for it to be entitled to exercise its rights against Emera under this Agreement.

8.5 Emera Default in its Obligation to Redispatch

(a) If Nalcor is in material compliance with its obligations under this Agreement and the ECA, and Emera is in default of its obligation to Schedule as provided for in the first sentence of **Section 2.1** or to Redispatch as provided for in **Section 2.2(e)**, and in each case subject to **Section 2.7**, Emera shall compensate Nalcor as liquidated damages for such default in an amount calculated by multiplying the amount of its Energy not Scheduled ("**Unscheduled Energy**"), by one of the following alternatives, selected by Nalcor in its absolute discretion (and notwithstanding how Nalcor actually mitigates its loss):

(i) 120% of the Reference Day-Ahead Price for the applicable hours (or any part thereof if such sub-hour scheduling is permitted by the NE-ISO) at the ISO-NE Salisbury node (described as NB-NE External Node .I.SALBRYNB345 in the ISO-NE Market Operations Manual) or any replacement or comparable node designated by the ISO-NE (the "**Pricing Node**"); or

(ii) 120% of a price per MWh for Energy calculated from time to time in accordance with a model based on the combined capital and operating costs, including an appropriate regulated rate of return, for a new combined cycle gas fired generation plant utilizing best available commercial technology determined at such time, such model to include the following inputs:

(A) a capital component reflecting a levelized price based on forecasted capital costs for the plant as of the date of the default, taking into account a reasonable plant capacity factor and a reasonable capital structure with a reasonable allocation of debt and equity based on industry standards for regulated utilities; and

(B) an operating component reflecting all fixed and variable operating costs of operating such a plant, with such components indexed to natural gas prices, costs of emissions, and all other reasonable operating costs of such a plant,

less

(iii) the value of the Unscheduled Energy that is either sold to any other Party, including Nalcor or NLH, or if converted to Stored Energy, when so sold, provided however that nothing in this **Section 8.5(a)** negates or limits any duty Nalcor may have to mitigate its Losses.

(b) The compensation calculated under **Section 8.5(a)** shall be less all transmission tariff charges (including charges in respect of applicable Ancillary Services) that would have been payable by Nalcor including:

(i) pursuant to this Agreement had such Energy and/or Capacity been transmitted from the Delivery Point to the NS-NB Border;

(ii) pursuant to the New Brunswick Transmission Utilization Agreement had such Energy and/or Capacity been transmitted from the NS-NB Border to the NB-Maine Border pursuant to that Agreement; and/or

(iii) pursuant to the ISO-NE Tariff, had such Energy and/or Capacity been transmitted from the NB-Maine Border to the Pricing Node pursuant to the ISO-NE Tariff.

(c) If the Pricing Node ceases to exist or otherwise not serve as a valid reference point for determining a Reference Day-Ahead Price at the NB-Maine Border, the Parties

agree to negotiate to determine the reference price, failing which, such matter shall be a Specified Dispute. **Section 1.2(m)(i)** applies to this **Section 8.5(c)**.

8.6 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 8.6(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;

(e) any Insolvency Event occurs with respect to Nalcor; and

(f) Nalcor is in default of its obligations under the Energy and Capacity Agreement and has not cured such default within the time period provided for therein.

8.7 Emera Remedies upon Nalcor Event of Default

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

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

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

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

(b) Losses - Subject to **Article 12**, 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.

(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 the resolution of future Disputes of a similar nature.

8.8 Suspension of the Transmission Facilitation Service

(a) If Nalcor or an Affiliate of Nalcor is in default of the provisions of the ECA after any applicable cure period, and is not delivering the Nova Scotia Block in accordance therewith, Emera, provided it is in material compliance with its obligations under this Agreement, may provide Notice to Nalcor that it intends to invoke its rights under this **Section 8.8**. Subject to **Section 8.8(b)**, if, within 14 days from the delivery of the Notice, the default has not been rectified, Emera may withhold the provision of the Transmission Facilitation Service to Nalcor or an Affiliate of Nalcor and will, for all purposes under this Agreement and all other applicable Formal Agreements, have no liability to Nalcor as a result thereof.

(b) Emera shall not suspend providing Nalcor or an Affiliate of Nalcor the Transmission Facilitation Service if Nalcor is contesting the default under the ECA as a dispute, and the matter has not been determined in accordance with the dispute resolution procedure provided for in the ECA.

(c) Once the default under the ECA has been rectified and any damages due to Emera have been paid in full, Emera shall resume providing Nalcor or an Affiliate of Nalcor the Transmission Facilitation Service in accordance with the provisions of this Agreement.

(d) This **Section 8.8** shall be Emera's sole and exclusive right, remedy and recourse under this Agreement with respect to a default by Nalcor under **Section 8.6(f)**.

8.9 Equitable Relief

Nothing in this Article will limit or prevent either Party from seeking equitable relief, including specific performance or a declaration to enforce the other Party's obligations under this Agreement.

8.10 Other Rights

This **Article 8** does not affect any right, remedy or recourse available under the Inter-Provincial Agreement or the ECA.

ARTICLE 9
FORCE MAJEURE

9.1 Force Majeure

(a) OATT Provisions - The provisions of the NS OATT that set out the definition and the legal effect of force majeure events are incorporated herein by reference, and for the purpose of incorporating such provisions by reference, the references to "Transmission Provider" and "Transmission Customer" as used in such NS OATT provisions shall be deemed to refer respectively, to Emera and Nalcor. Notwithstanding the foregoing, Government Action shall not be considered Force Majeure.

(b) If by reason 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:

(i) forthwith give 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;

(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, fulfill or resume fulfilling its obligations hereunder;

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

(vi) 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.

(c) Notwithstanding **Sections 9.1(b)(i)** and **16.1**, Notices given in respect 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 start of the Initial Term. 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 16.1**.

ARTICLE 10
DISPUTE RESOLUTION

10.1 General

(a) Dispute Resolution Procedure - The Parties agree to resolve all Disputes pursuant to the dispute resolution procedure set out in **Schedule 4** (the "**Dispute Resolution Procedure**").

(b) 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 10**, without prejudice to either Party's rights pursuant to this Agreement.

10.2 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 10.2** does not apply to Disputes relating to invoices pursuant to **Article 4**, which shall be governed by **Section 4.5**.

ARTICLE 11
LIABILITY AND INDEMNITY

11.1 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.

11.2 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.

11.3 Own Property Damage

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

11.4 Indemnification Procedure

(a) Generally - Each Party (each, an "**Indemnitor**") shall indemnify and hold harmless the other Party and the other Persons as set forth in **Section 11.1** or **11.2**, as applicable, (individually and collectively, an "**Indemnified Party**") as provided therein in the manner set forth in this **Section 11.4**.

(b) Notice of Claims - If any Indemnified Party desires to assert its right to indemnification from an Indemnitor required to indemnify such Indemnified Party,

the Indemnified Party shall give the Indemnitor prompt Notice of the Claim giving rise thereto, which shall describe the Claim in reasonable detail and shall indicate the estimated amount, if practicable, of the indemnifiable loss that has been or may be sustained by the Indemnified Party. The failure to promptly provide Notice to the Indemnitor hereunder shall not relieve the Indemnitor of its obligations hereunder, except to the extent that the Indemnitor is actually and materially prejudiced by the failure to so notify promptly.

(c) Right to Participate - The Indemnitor shall have the right to participate in or, by giving Notice to the Indemnified Party, to elect to assume the defence of a Third Party Claim in the manner provided in this **Section 11.4** at the Indemnitor's own expense and by the Indemnitor's own counsel (satisfactory to the Indemnified Party, acting reasonably), and the Indemnified Party shall co-operate in good faith in such defence.

(d) Notice of Assumption of Defence - If the Indemnitor desires to assume the defence of a Third Party Claim, it shall deliver to the Indemnified Party Notice of its election within 30 days following the Indemnitor's receipt of the Indemnified Party's Notice of such Third Party Claim. Until such time as the Indemnified Party shall have received such Notice of election, it shall be free to defend such Third Party Claim in any reasonable manner it shall see fit and in any event shall take all actions necessary to preserve its rights to object to or defend against such Third Party Claim and shall not make any admission of liability regarding or settle or compromise such Third Party Claim. If the Indemnitor elects to assume such defence, it shall promptly reimburse the Indemnified Party for all reasonable third party expenses incurred by it up to that time in connection with such Third Party Claim but it shall not be liable for any legal expenses incurred by the Indemnified Party in connection with the defence thereof subsequent to the time the Indemnitor commences to defend such Third Party Claim, subject to the right of the Indemnified Party to separate counsel at the expense of the Indemnitor as provided in **Section 11.4(h)**.

(e) Admissions of Liability and Settlements - Without the prior consent of the Indemnified Party (which consent shall not be unreasonably withheld), the Indemnitor shall not make any admission of liability regarding or enter into any settlement or compromise of or compromise any Third Party Claim that would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from all liability or obligations. Similarly, the Indemnified Party shall not make any admission of liability regarding or settle or compromise such Third Party Claim without the prior consent of the Indemnitor (which consent shall not be unreasonably withheld). If a firm offer is made to settle a Third Party Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to full indemnification hereunder or for which the Indemnified Party has not been fully released and discharged from further liability or obligations, and the Indemnitor

desires to accept and agree to such offer, the Indemnitor shall give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within seven days after receipt of such Notice or such shorter period as may be required by the offer to settle, the Indemnitor may continue to contest or defend such Third Party Claim and, in such event, the maximum liability of the Indemnitor in relation to such Third Party Claim shall be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

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

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

(h) Indemnified Party's Right to Separate Counsel - If the Indemnitor has undertaken the defence of a Third Party Claim where the named parties to any action or proceeding arising from such Third Party Claim include both the Indemnitor and the Indemnified Party, and a representation of both the Indemnitor and the Indemnified Party by the same counsel would be inappropriate due to the actual or potential differing interests between them (such as the availability of different defences), then the Indemnified Party shall have the right, at the cost and expense of the Indemnitor, to engage separate counsel to defend such Third Party Claim on behalf of the Indemnified Party and all other provisions of this **Section 11.4** shall continue to apply to the defence of the Third Party Claim, including the Indemnified Party's obligation not to make any admission of liability regarding, or settle or compromise, such Third Party Claim without the Indemnitor's prior consent. In addition, the Indemnified Party shall have the right to employ separate counsel and to participate in the defence of such Third Party Claim at any time, with the fees and expenses of such counsel at the expense of the Indemnified Party.

11.5 Insurer Approval

In the event that any Claim arising hereunder is, or could potentially be determined to be, an insured Claim, neither the Indemnified Party nor the Indemnitor, as the case may be, shall

negotiate, settle, retain counsel to defend or defend any such Claim, without having first obtained the prior approval of the insurer(s) providing such insurance coverage.

ARTICLE 12
LIMITATION OF DAMAGES

12.1 Limitation 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 11** and **Article 12** shall apply to any and all Claims.

12.2 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 favor of a third party shall be deemed to be direct, actual damages, as between the Parties, for the purposes of this **Section 12.2**. For the purposes of this **Section 12.2**, lost revenues or profits in relation to the purchase or sale of Energy or Capacity shall not be considered to be consequential, incidental or indirect damages, provided however that a Party must still establish such lost revenues or profits in accordance with Applicable Law.

12.3 Liquidated Damages

To the extent that any damages required to be paid under 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.

12.4 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.

12.5 Double Recovery

Any damages due to Nalcor under this Agreement shall be calculated so as to not allow double recovery of damages with respect to the failure to transmit, schedule or dispatch the same Energy of Nalcor under the Maritime Link (Nalcor) Transmission Service Agreement, the New Brunswick Transmission Utilization Agreement or the MEPCO Transmission Rights Agreement.

12.6 No Breakage or other Similar Financing Costs Permitted

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

ARTICLE 13
CONFIDENTIALITY

13.1 Incorporation of Project NDA

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

13.2 Disclosure of Agreement

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

ARTICLE 14
ASSIGNMENT AND CHANGE OF CONTROL

14.1 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 5**.

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

(d) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.1** will be null and void.

14.2 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 5**.

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

(d) Non-Permitted Assignment - Any assignment in contravention of this **Section 14.2** will be null and void.

14.3 Nalcor Rights Otherwise Not Assignable

The NS Transmission Rights granted to Nalcor under this Agreement are personal to Nalcor, and Nalcor shall only use such NS Transmission Rights in good faith to transmit Energy generated by itself or an Affiliate or acquired by it from a third party in a bona fide commercial transaction and, for greater certainty, Nalcor may not use such NS Transmission Rights to directly or indirectly transmit Energy on behalf of a third party.

ARTICLE 15
REPRESENTATIONS AND WARRANTIES

15.1 Nalcor Representations and Warranties

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

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

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

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

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

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

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

(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 is not aware of any fact about its bulk energy transmission system used by it to perform any of its obligations under this Agreement which would prevent it from meeting the requirements of Good Utility Practice.

15.2 Emera Representations and Warranties

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

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

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

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

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

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

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

(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 is not aware of any fact about its bulk energy transmission system used by it to perform any of its obligations under this Agreement which would prevent it from meeting the requirements of Good Utility Practice.

ARTICLE 16
MISCELLANEOUS PROVISIONS

16.1 Notices

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

To Nalcor:

Nalcor Energy
500 Columbus Drive
P.O. Box 12800
St. John's, NL
A1B 0C9
Attention: VP Business Development and Strategic Planning
Fax: (709) 737-1782

with a copy to:

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

To Emera:

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

with a copy to:

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

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

16.2 Prior Agreements

Except for the Assignment of Nova Scotia Transmission Utilization Agreement dated January 28, 2013 among Emera, NSP Maritime Link Incorporated and Nalcor, this Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter of hereof (including the Term Sheet, the Sanction Agreement and subject to **Section 1.6**, the Original NSTUA). 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.

16.3 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.

16.4 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.

16.5 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.

16.6 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 NS Transmission Rights 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.

16.7 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.

16.8 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.

16.9 Time of the Essence

Time shall be of the essence.

16.10 Amendments

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

16.11 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.

16.12 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.

16.13 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.

16.14 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.

16.15 Successors and Assigns

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

16.16 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 above written.

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

_____
Name: Peter Hickman

NALCOR ENERGY

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

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

We have authority to bind the corporation.

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: Nancy Tower
Title: Executive Vice-President, Business Development

We have authority to bind the company.

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

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

NALCOR ENERGY

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

_____
Name: Peter Hickman

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

We have authority to bind the corporation.

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

EMERA INC.

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

_____
Name: Rene Gallant

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

We have authority to bind the company.

NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

SCHEDULE 1

FORMAL AGREEMENTS

FORMAL AGREEMENTS

1. Maritime Link Joint Development Agreement
2. Energy and Capacity Agreement
3. Maritime Link (Nalcor) Transmission Service Agreement
4. Maritime Link (Emera) Transmission Service Agreement
5. Nova Scotia Transmission Utilization Agreement
6. New Brunswick Transmission Utilization Agreement
7. MEPCO Transmission Rights Agreement
8. Interconnection Operators Agreement
9. Joint Operations Agreement
10. Newfoundland and Labrador Development Agreement
11. Labrador-Island Link Limited Partnership Agreement
12. Inter-Provincial Agreement
13. Supplemental Agreement

NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

SCHEDULE 2

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:

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

"**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;

"**Dispatch Plan**" has the meaning set forth in **Section 3.1**;

"**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 the Parties;

"**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 the Parties;

"**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;

"**NSTUA**" means the Nova Scotia Transmission Utilization Agreement between the Parties;

"**Prior Day**" means:

(a) in respect of scheduling flows pursuant to the NSTUA or the MEPCO TRA, 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

"**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 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 necessary to facilitate the scheduling of Energy for Nalcor under the Transmission Agreements. The scheduling protocol is intended to facilitate 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 - PROCEDURE AND STANDARD NOTIFICATION TIMELINES

3.1 Scheduling Procedures

The following scheduling procedures for daily scheduling shall apply when Nalcor Schedules the transmission of Energy pursuant to the Transmission Agreements:

Step 1 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 2 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 3 Schedule Modification and Backstop Remedies - If Emera has given Nalcor notice pursuant to **Step 2(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 1**, adjusted to address the limitations set out in **Step 2(b)(ii)**;

(ii) if Emera has advised Nalcor pursuant to **Step 2(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 2(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 1(d)**, Emera will, create the E-Tags associated with the scheduling requests contained in the Dispatch Plan.

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 2(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 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.

3.2 Communications

Unless otherwise agreed to by the Parties, communications between the Parties in respect of the Steps in **Section 3.1** shall be by e-mail or on electronically recorded phone-lines.

3.3 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)(i) of the Agreement applies to this **Section 3.3**.

3.4 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)(i) of the Agreement applies to this **Section 3.4**.

3.5 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.

3.6 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.

NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

SCHEDULE 3

CALCULATION OF TRANSMISSION LOSSES

CALCULATION OF TRANSMISSION LOSSES

1.0 Definitions

In this Schedule, the following terms shall have the meaning set forth below:

"**Off-Peak Hours**" means the time from but excluding 2300 APT to and including 0700 APT, of the immediately following day, for each day;

"**Peak Hours**" means the time from but excluding 0700 APT to and including 2300 APT on the same day;

"**NS OATT Transmission Customer**" means a Person taking service under either Part II (Point to Point Service) or Part III (Network Integration Service) under the NS OATT; and

"**NS-NTQ Path**" means the transmission path used in the Emera Firm Point-to-Point Transmission Service, and for greater certainty, means all transmission facilities between the Delivery Point and the NS-NB Border, including the Onslow South transmission facilities, which facilitate the flow of Energy from the Delivery Point to the NS-NB Border, including all transmission facilities along the path at nominal voltages of above 100 kV so as to include only the elements used for the facilitation of transmission of the NS-NTQ from the Delivery Point to the NS-NB Border, all as represented in "Nova Scotia Path Losses Chart" attached as Appendix A.

2.0 Calculating Monthly Transmission Losses

For the purpose of calculating the Transmission Losses attributable to the transmission of the Confirmed NS-NTQ Energy from the Delivery Point to the NS-NB Border pursuant to Section 2.1(e) of the Agreement, the following provisions will apply:

(a) for each month, a transmission loss factor will be determined for each of (i) the Peak Hours; and (ii) the Off-Peak Hours. Such transmission loss factors will be applied in accordance with **Section 3.0**, to the Confirmed NS-NTQ Energy during the Peak Hours and Off-Peak Hours, as appropriate, to determine the amount of Transmission Losses to be netted from the Confirmed NS-NTQ Energy pursuant to Section 2.1(e) of the Agreement in each hour of such month;

(b) the transmission loss factors for the Peak Hours and the Off-Peak Hours described in paragraph **(a)** will be calculated in accordance with **Section 4.0**, using actual transmission losses, Energy injections and Energy withdrawals on the NS-NTQ Path by all NS OATT Transmission Customers and Nalcor for the 12 month period ending immediately prior to the calendar month preceding the month in which they will be applied (the "**Reference Period**"); and

(c) the transmission loss factors to be applied during the Peak Hours and Off-Peak Hours of the first 13 months of delivery of the Confirmed NS-NTQ Energy over the NS-NTQ Path pursuant to this Agreement shall be based on the methodology described in this **Schedule 3**, provided that instead of using actual Energy amounts in the

performance of the relevant calculations, the calculations will use forecasts of Energy injections into and Energy withdrawals from the NS-NTQ Path by NS OATT Transmission Customers and Nalcor during the relevant periods.

3.0 Application of the Loss Factor

The calculation of Transmission Losses applicable to the total NS-NTQ in each month will be calculated as follows:

(a) during Peak Hours: Confirmed NS-NTQ Energy delivered by Emera to the NS-NB Border = Confirmed NS-NTQ Energy received by Emera at Delivery Point x (1-NSTPLSF) measured in MW

Where: NSTPLSF = NS-NTQ Path Peak Hours Loss Factor.

(b) during Off-Peak Hours: Confirmed NS-NTQ Energy delivered by Emera to the NS-NB Border = Confirmed NS-NTQ Energy received by Emera at Delivery Point x (1-NSTOLSF) measured in MW

Where: NSTOLSF = NS-NTQ Path Off-Peak Hours Loss Factor.

The foregoing calculations will be conducted in a manner that is consistent with the sample calculations provided in Appendix A.

4.0 NS Transmission Path Loss Factors Calculation The transmission loss factors to be applied to the Confirmed NS-NTQ Energy in each hour of a month will, subject to **Section 2.0(c)**, be calculated using actual measured Energy amounts for the Reference Period, as follows:

(a) the NS-NTQ Path Peak Hours Loss Factor is the ratio of the NS-NTQ Path Peak Hours transmission losses during the Reference Period to the total Energy injected into the NS-NTQ Path by all NS OATT Transmission Customers and Nalcor during the Peak Hours of the Reference Period ("**NS-NTQ Path Peak Hours Loss Factor**"); and

(b) the NS-NTQ Path Off-Peak Hours Loss Factor is the ratio of the NS-NTQ Path Off-Peak Hours transmission losses during the Reference Period to the total Energy injected into the NS-NTQ Path by all NS OATT Transmission Customers and Nalcor during the Off-Peak Hours of the Reference Period ("**NS-NTQ Path Off-Peak Hours Loss Factor**").

5.0 Reconciliation

For each month, a reconciliation shall be performed to address any difference between (i) the Energy that has been contributed by Nalcor to the NS Transmission System to account for Transmission Losses, as calculated in accordance with **Section 3.0**, and (ii) Nalcor's actual proportionate share of the measured transmission losses on the NS-NTQ Path. For the purpose of performing each monthly reconciliation, the following shall apply:

(a) following the end of the month, the actual monthly Energy contributed by Nalcor to the NS Transmission System to account for Transmission Losses shall be calculated as

equal to the difference between: (i) the Energy received by Emera pursuant to the Agreement at the Delivery Point during such month; and (ii) the Energy delivered by Emera pursuant to the Agreement to the NS-NB Border during such month (the "**Nalcor Monthly Contributed Losses**");

(b) following the end of the month, the NS System Operator will compute the actual Transmission Losses over the NS-NTQ Path for the Peak Hours and the Off-Peak Hours during the month. Such Transmission Losses will be expressed as ratios to the total amounts of Energy injected into the NS-NTQ Path by all NS OATT Transmission Customers and Nalcor during the Peak Hours and the Off-Peak Hours of such month (the "**Actual Monthly Peak Loss Factor**" and the "**Actual Monthly Off-Peak Loss Factor**", respectively);

(c) the total actual proportionate share of Energy that Nalcor is responsible to contribute to the NS Transmission System to account for Transmission Losses in respect of the month (the "**Actual Nalcor Energy Losses Share**") shall be calculated by adding together the two amounts specified by paragraphs **(i)** and **(ii)**, as follows:

(i) the Peak Hours transmission losses share, calculated as the difference between:

A. (the sum of all Confirmed NS-NTQ Energy amounts delivered by Emera to the NS-NB Border during the Peak Hours in the month)/(1-Actual Monthly Peak Loss Factor); and

B. the sum of all Confirmed NS-NTQ Energy amounts delivered by Emera to the NS-NB Border during the Peak Hours in the month; and

(ii) the Off-Peak Hours transmission losses share, calculated as the difference between:

A. (the sum of all Confirmed NS-NTQ Energy amounts delivered by Emera to the NS-NB Border during the Off-Peak Hours in the month)/(1-Actual Monthly Off-Peak Loss Factor); and

B. the sum of all Confirmed NS-NTQ Energy amounts delivered by Emera to the NS-NB Border during the Off-Peak Hours in the month; and

(d) the difference between the Actual Nalcor Energy Losses Share and the Nalcor Monthly Contributed Losses (the "**NSTUA Losses Adjustment**") will be, as appropriate, added to or subtracted from the Nova Scotia Block Energy deliveries for the next month in accordance with the Energy and Capacity Agreement.

6.0 Metering

Within 120 days after the A&R Effective Date, the Parties will agree on metering and measuring standards used in the calculation of the NS-NTQ Path Peak Hour transmission losses and NS-NTQ Path Off-Peak Hour transmission losses under this **Schedule 3**, which standards will be consistent with Good Utility Practice. Section 1.2(m)(i) of the Agreement applies to this **Section 6.0.**

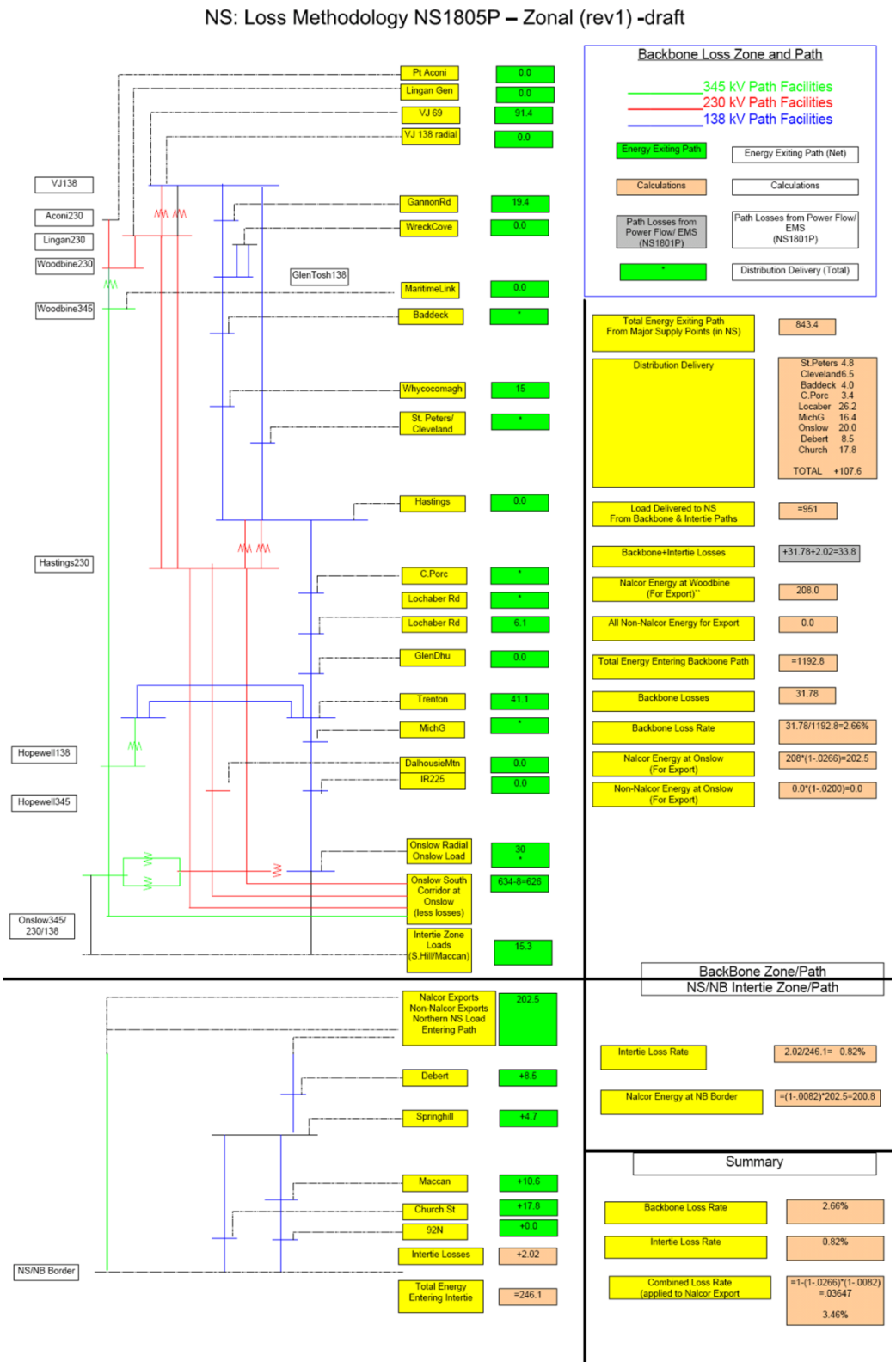
7.0 Disputes

Any Dispute relating to the determination of Transmission Losses applicable to the Confirmed NS-NTQ Energy pursuant to this **Schedule 3** shall be a Specified Dispute.

Appendix A
Calculation of Transmission Losses

NOVA SCOTIA PATH LOSSES CHART

Nova Scotia Path Losses Chart



NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

SCHEDULE 4

DISPUTE RESOLUTION PROCEDURE

DISPUTE RESOLUTION PROCEDURE

SECTION 1 – INTERPRETATION

1.1 Definitions

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

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

"Arbitration Act" means the *Arbitration Act* (Newfoundland and Labrador);

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

"**Arbitration Procedure**" means the provisions of **Section 5**;

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

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

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

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

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

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

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

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

"**Expert Determination Procedure**" means the provisions of **Section 6**;

"**General Dispute**" means a Dispute that is not a Specified Dispute;

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

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

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

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

"**Mediation Procedure**" means the provisions of **Section 4**;

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

"**Mediator**" means the mediator appointed pursuant to the Mediation Procedure;

"**Negotiation Procedure**" means the provisions of **Section 3**;

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

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Section References

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

1.3 Appendix

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

Appendix A - *Commercial Arbitration Code* (Canada)

SECTION 2 – ALTERNATIVE DISPUTE RESOLUTION

2.1 Purpose and Sequence of Dispute Resolution

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

(a) first, by referring the Dispute to negotiation pursuant to the Negotiation Procedure; and

(b) in the case of a General Dispute:

(i) second, by way of mediation pursuant to the Mediation Procedure; and

(ii) third, either:

(A) by arbitration pursuant to the Arbitration Procedure where the Parties agree or are deemed to have agreed to arbitration; or

(B) by litigation, where the Parties do not agree and are not deemed to have agreed to arbitration pursuant to the Arbitration Procedure; or

(c) in the case of a Specified Dispute, second by expert determination in accordance with the Expert Determination Procedure.

2.2 Confidentiality

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

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

2.3 Interim Measures

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

2.4 Parties to Proceedings

(a) For the purposes of this Schedule and any Dispute submitted for resolution hereunder, any of Nalcor Energy and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively, and any of Emera Inc. and its Affiliates who are Parties and have the same interest in the Dispute will be deemed to be one Party and shall act collectively. When applicable, in this Schedule references to a "Party" are to either such collective, and references to the "Parties" are to both such collectives.

(b) Notwithstanding **Section 2.4(a)**, (i) any Notice given by Nalcor or an Affiliate of Nalcor in connection with this Dispute Resolution Procedure shall be given to Emera Inc., if it is a Party, and to all Affiliates of Emera Inc. that are Parties, and (ii) any Notice given by Emera or an Affiliate of Emera in connection with this Dispute Resolution Procedure shall be given to Nalcor Energy, if it is a Party, and to all Affiliates of Nalcor Energy that are Parties.

2.5 Mediator or Arbitrator as Witness

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

SECTION 3 – NEGOTIATION PROCEDURE

3.1 Negotiation of Dispute

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

and seek to resolve the Dispute through negotiation. Negotiations shall be concluded within 15 Business Days from the date of delivery of the Review Notice or within such extended period as may be agreed in writing by the Parties.

3.2 Reservation of Rights

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

3.3 Failure of Negotiations

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

SECTION 4 – MEDIATION PROCEDURE

4.1 Request for Mediation

(a) If the Parties are unable to resolve a Dispute through the Negotiation Procedure, a Party (the "**Requesting Party**"), by Notice to the other Party given within five Business Days after expiry of the period set out in or agreed by the Parties under **Section 3.3**, may request that the Dispute be mediated through non-binding mediation under this **Section 4** by delivering to the other Party a Notice (a "**Mediation Notice**") containing a written summary of relevant Information relative to the matters that remain in Dispute and the names of three individuals who are acceptable to the Requesting Party to act as a sole Mediator.

(b) Any Mediator must be impartial and independent of each of the Parties, be an experienced commercial mediator, and preferably have experience and knowledge concerning the subject matter of the Dispute.

(c) Any mediation commenced under this Mediation Procedure will continue only until the first of the following occurs:

(i) the Party in receipt of a Mediation Notice declines to submit to mediation and gives Notice thereof to the Requesting Party;

(ii) the Party in receipt of a Mediation Notice fails to send a Mediation Response in accordance with **Section 4.1(d)**;

(iii) the Parties are unable to appoint a Mediator within the period allowed by **Section 4.2**;

(iv) either Party gives Notice to the other Party that it terminates the mediation;

(v) the Mediator provides the Parties with a written determination that the mediation is terminated because the Dispute cannot be resolved through mediation;

(vi) **Section 4.3(d)** applies; or

(vii) the Dispute is settled as provided in **Section 4.4**.

(d) If the mediation proceeds, within five Business Days after receiving the Mediation Notice the receiving Party shall send a written response to the Mediation Notice (the "**Mediation Response**") to the Requesting Party including a summary of Information relating to the matters that remain in Dispute and accepting one of the individuals proposed as Mediator in the Mediation Notice, or proposing another individual or individuals, up to a maximum of three, as Mediator.

4.2 Appointment of Mediator

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

4.3 Mediation Process

(a) The Parties shall participate in good faith and in a timely and responsive manner in the Mediation Procedure. A copy of the Mediation Notice and the Mediation Response shall be delivered to the Mediator within two Business Days after his or her appointment. The Mediator shall, after consultation with the Parties, set the date, time and place for the mediation as soon as possible after being appointed.

(b) The location of the mediation will be St. John's, Newfoundland and Labrador, unless otherwise agreed to by the Parties, and the language of the mediation will be English.

(c) The Parties shall provide such assistance and produce such Information as may be reasonably necessary, and shall meet together with the Mediator, or as otherwise determined by the Mediator, in order to resolve the Dispute.

(d) If the mediation is not completed within 10 Business Days after appointment of the Mediator pursuant to **Section 4.2**, the mediation will be considered to have failed to resolve the Dispute and the Mediation Procedure will be deemed to be terminated, unless the Parties agree in writing to extend the time to resolve the Dispute by mediation.

(e) Each Party shall each bear its own costs and expenses associated with the mediation, but the Parties shall share the common costs of the mediation equally (or in such other proportions as they may agree), including the costs of or attributable to the Mediator and the facilities used for the mediation.

4.4 Reservation of Rights

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

SECTION 5 – ARBITRATION PROCEDURE

5.1 Submission to Binding Arbitration

(a) If the Parties are unable to resolve a General Dispute through the Negotiation Procedure or the Mediation Procedure, then following termination of the mediation, or, if no Mediation Notice is given, following failure of negotiations as provided in **Section 3.3**:

(i) either Party (the "**Notifying Party**") may submit the General Dispute to binding arbitration under this **Section 5** and give Notice to the other Party (the "**Notified Party**") of such submission (an "**Arbitration Notice**"); or

(ii) if **Section 5.1(e)** does not apply, either Party may elect, by giving notice thereof to the other Party, to proceed with resolution of the General Dispute pursuant to Section **2.1(b)(ii)(B)**.

(b) A Notified Party may consent to arbitration of the Dispute referred to in the Arbitration Notice by giving a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given.

(c) If the Notified Party does not give a Consent to Arbitration within 10 Business Days after the day the Arbitration Notice was given, the Notified Party will be deemed to have given a Consent to Arbitration on the last day of such 10 Business Day period.

(d) If the Notified Party delivers a Non-Consent to Arbitration with 10 Business Days after the day the Arbitration Notice was given, **Section 2.1(b)(ii)(B)** will apply.

(e) Notwithstanding **Sections 5.1(b)**, **5.1(c)** and **5.1(d)**, where under the Agreement the Parties are deemed to have agreed pursuant to this **Section 5.1** to resolve the Dispute by arbitration, the Notified Party will be deemed to have given a Consent to Arbitration on the day the Arbitration Notice is given.

(f) When a Notifying Party has given an Arbitration Notice and the Notified Party has given or been deemed pursuant to **Section 5.1(c)** or **5.1(e)** to have given a Consent to Arbitration, the Dispute referred to in the Arbitration Notice shall be resolved by arbitration pursuant to this **Section 5**. The arbitration will be subject to the Arbitration Act and conducted in accordance with the Code, as supplemented and modified by this **Section 5**.

5.2 Provisions Relating to the Arbitration Act and the Code

(a) The Tribunal will not have the power provided for in subsection 10(b) of the Arbitration Act.

(b) Notwithstanding Article 3 of the Code, Notices for the purposes of an arbitration under this **Section 5** shall be given and deemed received in accordance with the provisions of the Agreement relating to Notices.

(c) For the purposes of Article 7 of the Code, this **Section 5** constitutes the "arbitration agreement".

(d) A reference in the Code to "a court or other authority specified in article 6", will be considered to be a reference to the Trial Division of the Supreme Court of Newfoundland and Labrador.

(e) The rules of law applicable to a General Dispute arbitrated under this **Section 5** will be the laws of Newfoundland and Labrador.

(f) Nothing in Article 5 or Article 34 of the Code will be interpreted to restrict any right of a Party pursuant to the Arbitration Act.

(g) For the purposes of Section 3 of the Arbitration Act, once a Consent to Arbitration has been given or deemed to have been given, the submission to arbitration will be deemed to be irrevocable.

(h) For greater certainty, Articles 8 and 9 of the Code shall only apply when the Parties have both agreed or been deemed to have agreed to binding arbitration under the Agreement or this **Section 5**.

(i) Where there is a conflict between this **Section 5** and the Code, this **Section 5** will prevail.

5.3 Appointment of Tribunal

(a) Subject to **Section 5.4**, the arbitration will be heard and determined by three Arbitrators. Each Party shall appoint an Arbitrator of its choice within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration. The Party-appointed Arbitrators shall in turn appoint a third Arbitrator, who shall act as Chair of the Tribunal, within 20 Business Days after the appointment of both Party-

appointed Arbitrators. If the Party-appointed Arbitrators cannot reach agreement on a third Arbitrator, or if a Party fails or refuses to appoint its Party-appointed Arbitrator within 20 Business Days after delivery or deemed delivery of the Consent to Arbitration, the appointment of the Chair of the Tribunal and the third Arbitrator will be made in accordance with Article 11 of the Code.

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

5.4 Arbitration by Single Arbitrator

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

5.5 Procedure

(a) Unless otherwise agreed by the Parties, the place of the arbitration will be St. John's, Newfoundland and Labrador.

(b) The arbitration shall be conducted in the English language and the Arbitrators must be fluent in the English language.

(c) If the Parties initiate multiple arbitration proceedings under the Agreement and other 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.

NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

SCHEDULE 5

FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT OF NOVA SCOTIA TRANSMISSION UTILIZATION AGREEMENT

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

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

AMONG:

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

- or -

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

- and -

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

- and -

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

- or -

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

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

WHEREAS:

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

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

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

ARTICLE 1
INTERPRETATION

1.1 Definitions

In this Agreement, including the recitals:

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

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

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

"**Assigned Agreement**" has the meaning set forth in the recitals;

"**Assignee**" means _____, an Affiliate of the Assignor;

"**Assignor**" means [Nalcor/Emera or an Affiliate of Nalcor/Emera, as applicable];

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

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

"**Consenting Party**" means [Nalcor/Emera or, if applicable as a result of prior assignments, specified Affiliates];

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

"**Dispute Resolution Procedure**" has the meaning set forth in **Section 4.1(a)**;

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

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

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

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

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

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

(a) an order is made, or an effective resolution passed, for the winding-up, liquidation or dissolution of such Party;

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

benefit of creditors, or admits in writing its inability to pay its debts generally as they come due or commits any other act of bankruptcy or insolvency, or suspends or threatens to suspend transaction of its usual business, or any action is taken by such Party in furtherance of any of the foregoing;

(c) a court having jurisdiction enters a judgment or order adjudging such Party a bankrupt or an insolvent person, or approving as properly filed an application or motion seeking an arrangement under the *Corporations Act* (Newfoundland and Labrador) or similar legislation in any other jurisdiction affecting any of its creditors or seeking reorganization, readjustment, arrangement, composition, protection from creditors, or similar relief under any bankruptcy or insolvency law or any other similar Applicable Law, or an order of a court having jurisdiction for the appointment of an interim receiver, receiver, monitor, liquidator, restructuring officer or trustee in bankruptcy of all or substantially all of the undertaking or property of such Party, or for the winding up, liquidation or dissolution of its affairs, is entered and such order is not contested and the effect thereof stayed, or any material part of the property of such Party is sequestered or attached and is not returned to the possession of such Party or released from such attachment within 30 days thereafter;

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

(e) such Party has ceased paying its current obligations in the ordinary course of business as they generally become due;

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

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

"**NL Crown**" means Her Majesty the Queen in Right of the Province of Newfoundland and Labrador;

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

"**Notice**" means a communication required or contemplated to be given by either Party to the other under this Agreement, which communication shall be given in accordance with **Section 5.1**;

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

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

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

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

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

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

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

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

1.2 Construction of Agreement

(a) Interpretation Not Affected by Headings, etc - The division of this Agreement into articles, sections and other subdivisions, the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect the

construction or interpretation of this Agreement. Unless otherwise indicated, all references to an "**Article**" or "**Section**" followed by a number and/or a letter refer to the specified article or section of this Agreement. The terms "**this Agreement**", "**hereof**", "**herein**", "**hereby**", "**hereunder**" and similar expressions refer to this Agreement and not to any particular Article or Section hereof. All references to a given agreement, instrument or other document shall be a reference to that agreement, instrument or other document as modified, amended, supplemented and restated through the date as of which such reference is made.

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

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

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

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

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

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

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

1.3 Applicable Law and Submission to Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the Province of Newfoundland and Labrador and the Federal laws of Canada applicable therein, but excluding all choice-of-law provisions. Subject to **Article 4**, the Parties irrevocably consent and submit to the exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador with respect to all matters relating to this Agreement, subject to any right of appeal to the Supreme Court of Canada. Each Party waives any objection that it may now or hereafter have to the determination of venue of any proceeding in such courts relating to this Agreement or that it may now or hereafter have that such courts are an inconvenient forum.

ARTICLE 2
ASSIGNMENT

2.1 Assignment to Affiliate

As of the Effective Date, the Assignor hereby assigns, transfers and sets over to the Assignee, its successors and permitted assigns, all of the Assignor's right, title and interest in the Assigned Agreement and all the benefits and advantages derived therefrom for the remainder of the term of the Assigned Agreement and any renewals or extensions thereof.

2.2 Assumption of Liabilities

The Assignee hereby accepts the within assignment of the Assigned Agreement as of the Effective Date and covenants and agrees with the Assignor and the Consenting Party to assume the covenants and obligations of the Assignor under the Assigned Agreement. The Assignee hereby agrees to assume all liabilities for, and in due and proper manner, to pay, satisfy, discharge, perform and fulfill all covenants, obligations and liabilities of the Assignor under the Assigned Agreement arising on and in respect of matters occurring after the Effective Date.

2.3 Limitations on Assignment / Assumption

The Assignor reserves to itself and does not assign to the Assignee, and the Assignee does not assume from the Assignor the following rights and/or obligations:

(a) ....

(b) ....

2.4 Confirmation of Status of Assigned Agreement

The Assignor hereby confirms to the Assignee that neither it nor, to its Knowledge, the Consenting Party is in default of any of its obligations under the Assigned Agreement. The Consenting Party hereby confirms to the Assignee that neither it nor, to its Knowledge, the Assignor is in default of any of its obligations under the Assigned Agreement.

2.5 Assignor to Remain Liable

Notwithstanding the foregoing, [Nalcor/Emera] expressly acknowledges and agrees that it shall remain liable to the Consenting Party as a primary obligor under the Assigned Agreement to observe and perform all of the conditions and obligations in the Assigned Agreement which the Assignor, and as of the Effective Date the Assignee, are bound to observe and perform.

2.6 [Nalcor/Emera] Defaults

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

(a) [Nalcor/Emera] ceases to carry on all or substantially all of its business or, except as permitted under the Assigned Agreement, transfers all or substantially all of its undertaking and assets; or

(b) an Insolvency Event occurs with respect to [Nalcor/Emera].

2.7 Acknowledgement of Consenting Party

The Consenting Party acknowledges, consents to and accepts the within assignment and assumption of the Assigned Agreement, subject to the terms and conditions herein and confirms to the Assignor and the Assignee that this consent constitutes any prior written consent stipulated in the Assigned Agreement.

2.8 Supplies and Payments Exclusive of Taxes

(a) Payment of Taxes - Each Party is separately responsible for, and shall in a timely manner discharge, its separate obligations in respect of the payment, withholding and remittance of all Taxes in accordance with Applicable Law.

(b) HST - Notwithstanding **Section 2.8(a)**, each of the Parties acknowledges and agrees that:

(i) all amounts of consideration, or payments and other amounts due and payable to or recoverable by or from another Party, under this Agreement are exclusive of any Taxes that may be exigible in respect of such payments or other amounts (including, for greater certainty, any applicable HST), and if any such Taxes shall be applicable, such Taxes shall be in addition to all such amounts and shall be paid, collected and remitted in accordance with Applicable Law; and

(ii) if one Party is required to collect Taxes pursuant to this Agreement, it shall forthwith provide to the other applicable Party such documentation required pursuant to **Section 2.10**.

2.9 Determination of Value for Tax Compliance Purposes

(a) Subject to the right of final determination as provided under **Section 2.9(b)**, the Parties agree to co-operate in determining a value for any property or service supplied pursuant to this Agreement for non-cash consideration.

(b) If a Party supplying a property or service under this Agreement for non-cash consideration is required to collect Taxes in respect of such supply, or if a Party acquiring a property or service under this Agreement for non-cash consideration is required to self-assess for Taxes in respect of such property or service, that Party shall determine a value expressed in Canadian dollars for such property or service for purposes of calculating the Taxes collectable or self-assessable, as applicable.

2.10 Invoicing

All invoices issued pursuant to this Agreement shall include all information prescribed by Applicable Law together with all other information required to permit the Party required to pay Taxes, if any, in respect of such supplies to claim input tax credits, refunds, rebates, remission or other recovery, as permitted under Applicable Law. Without limiting the foregoing, except as otherwise agreed to by the Parties in writing, all invoices issued pursuant to this Agreement shall include all of the following particulars:

(a) the HST registration number of the supplier;

(b) the subtotal of all HST taxable supplies;

(c) the applicable HST rate(s) and the amount of HST charged on such HST taxable supplies; and

(d) a subtotal of any amounts charged for any “exempt” or “zero-rated” supplies as defined in Part IX of the Excise Tax Act.

2.11 Payment and Offset

(a) Subject to **Section 2.11(b)**, Taxes collectable by one Party from another Party pursuant to this Agreement will be payable in immediately available funds within 30 days of receipt of an invoice.

(b) A Party may offset amounts of Taxes owing to another Party under this Agreement against Taxes or other amounts receivable from such other Party pursuant to this Agreement or any of the other Formal Agreements, subject to reporting and remittance of such offset Taxes in accordance with Applicable Law.

2.12 HST Registration Status

(a) The Assignee represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

(b) The Assignor represents and warrants that it is registered for purposes of the HST and that its registration number is ●.

2.13 [●]

[Insert any provision required by the Assigned Agreement to be included.]

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Assignor and Assignee Representations and Warranties

Each of the Assignor and the Assignee hereby jointly and severally represents and warrants to the Consenting Party that, as of the Effective Date:

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

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

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

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

(e) there are **[**no Legal Proceedings **NTD: or set out Legal Proceedings, if any]** pending or, to its Knowledge, threatened against it that may materially adversely affect its ability to perform its obligations under this Agreement;

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

(g) it is not a non-resident of Canada for the purposes of the Income Tax Act; and

(h) the Assignee is an Affiliate of the Assignor.

ARTICLE 4
DISPUTE RESOLUTION PROCEDURE

4.1 General

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

(b) Undisputed Amounts - In the event of a Dispute concerning any amount payable by one Party to another Party, the Party with the payment obligation shall pay the whole of such payment in full. **[NTD: Conform to Assigned Agreement]**

ARTICLE 5
MISCELLANEOUS PROVISIONS

5.1 Notices

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

To Assignor:

[•]

To Assignee:

[•]

To Consenting Party:

[•]

[To Nalcor/Emera:]

[•]

Such Notice shall (i) if delivered personally or by courier, be deemed to have been given or made on the day of delivery, and (ii) if sent by electronic mail or facsimile transmission, and be confirmed by a copy immediately sent by courier, be deemed to have been given or made on the day it was successfully transmitted by electronic mail or facsimile transmission as evidenced by automatic confirmation of receipt, provided however that if in any case such day is not a Business Day or if the

Notice is received after Regular Business Hours (time and place of receipt), the Notice shall be deemed to have been given or made on the next Business Day. Any Party may change its address or fax number hereunder from time to time by giving Notice of such change to the other Parties.

5.2 Prior Agreements

This Agreement supersedes all prior communications, understandings, negotiations and agreements between the Parties, whether oral or written, express or implied with respect to the subject matter hereof. There are no representations, warranties, collateral agreements or conditions affecting this Agreement other than as expressed herein. Each of the Parties further acknowledges and agrees that, in entering into this Agreement, it has not in any way relied upon any oral or written agreements, representations, warranties, statements, promises, information, arrangements or understandings, expressed or implied, not specifically set forth in this Agreement or the other Formal Agreements.

5.3 Counterparts

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

5.4 Expenses of Parties

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

5.5 Announcements

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

5.6 Relationship of the Parties

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

5.7 Further Assurances

Each of the Parties shall, from time to time, do all such acts and things and execute and deliver, from time to time, all such further documents and assurances as may be reasonably necessary to carry out and give effect to the terms of this Agreement.

5.8 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be wholly or partially illegal, invalid, void, voidable or unenforceable in any jurisdiction for any reason, such illegality, invalidity or unenforceability shall not affect the legality, validity and enforceability of the balance of this Agreement or its legality, validity or enforceability in any other jurisdiction. If any provision is so determined to be wholly or partially illegal, invalid or unenforceable for any reason, the Parties shall negotiate in good faith a new legal, valid and enforceable provision to replace such illegal, invalid or unenforceable provision, which, as nearly as practically possible, has the same effect as the illegal, invalid or unenforceable provision.

5.9 Time of the Essence

Time shall be of the essence.

5.10 Amendments

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

5.11 No Waiver

Any failure or delay of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the Term shall not affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision. Any consent or approval given by a Party pursuant to this Agreement shall be limited to its express terms and shall not otherwise increase the obligations of the Party giving such consent or approval or otherwise reduce the obligations of a Party receiving such consent or approval.

5.12 No Third Party Beneficiaries

Except as otherwise provided herein or permitted hereby, this Agreement is not made for the benefit of any Person not a party to this Agreement, and no Person other than the Parties or their respective successors and permitted assigns shall acquire or have any right, remedy or claim under or by virtue of this Agreement.

5.13 Survival

All provisions of this Agreement that expressly or by their nature are intended to survive the termination (however caused) of this Agreement, including covenants, warranties, guarantees, releases and indemnities, continue as valid and enforceable rights and obligations (as

the case may be) of the Parties, notwithstanding any such termination, until they are satisfied in full or by their nature expire.

5.14 Waiver of Sovereign Immunity

A Party that now or hereafter has a right to claim sovereign immunity for itself or any of its assets hereby waives any such immunity to the fullest extent permitted by Applicable Law. This waiver includes immunity from (i) any proceedings under the Dispute Resolution Procedure; (ii) any judicial, administrative or other proceedings to aid the Dispute Resolution Procedure; and (iii) any confirmation, enforcement or execution of any decision, settlement, award, judgment, service of process, execution order or attachment (including pre-judgment attachment) that results from the Dispute Resolution Procedure or any judicial, administrative or other proceedings commenced pursuant to this Agreement. Each Party acknowledges that its rights and obligations under this Agreement are of a commercial and not a governmental nature.

5.15 Successors and Assigns

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

5.16 [Capacity of Nalcor

Nalcor is entering into this Agreement, and Emera acknowledges that Nalcor is entering into this Agreement, solely in its own right and not on behalf of or as agent of the NL Crown. **NTD: Include if Nalcor signing Agreement.]**

[Remainder of this page intentionally left blank.]

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

Assignor

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/ [corporation]

Assignee

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/ [corporation]

Consenting Party

By: _____
Name:
Title:

By: _____
Name:
Title:

I/We have authority to bind the [company]/ [corporation]

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